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(ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS)

REPORT OF PROCEEDINGS

[<sup>Hearings</sup> Canada]

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OTTAWA, ONTARIO, NOVEMBER 24, 1938

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ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

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OTTAWA, ONTARIO, NOVEMBER 24, 1938

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The Royal Commission appointed to re-examine the economic and financial basis of Confederation and the distribution of legislative powers in the light of the economic and social developments of the last seventy years, met at the Parliament Buildings, Ottawa, Ontario, on Thursday, November 24, 1938, at 10.30 a.m.

PRESENT:

DR. JOSEPH SIROIS.....CHAIRMAN

JOHN W. DAFOE, Esq.,	)	
	)	
DR. ROBERT ALEXANDER MacKAY	)	Commissioners
	)	
PROFESSOR HENRY FORBES ANGUS	)	

Commission Counsel:

James McGregor Stewart, Esq., K.C.

Secretariat

Alex. Skelton, Esq.,	Secretary
Adjutor Savard, Esq.,	Secrétaire Français
R. M. Fowler, Esq.,	Legal Secretary
Wilfrid Eggleston, Esq.,	Assistant to the Secretary

FOR THE GOVERNMENT OF NEW BRUNSWICK:

Hon. A. A. Dysart	Premier
Hon. J. B. McNair	Attorney-General
Hon. A. P. Paterson	Minister of Education, and Federal and Municipal Relations
Hon. W. P. Jones, K. C.,	Counsel
James H. Conlon, Esq.,	Director of Federal and Municipal Relations

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10078 a

Railway Committee Room  
Parliament Building,  
Ottawa, Ont.  
November, 24, 1938.

MORNING SESSION

The Commission met at 10.30 a.m.

RESIGNATION OF CHAIRMAN HON. N. W. ROWELL

THE CHAIRMAN (DR. JOSEPH SIROIS): Gentlemen, since the Commission last met in public session, the resignation of our respected Chairman, the Hon. N. W. Rowell, Chief Justice of Ontario, has been tendered to the Canadian government. By reason of ill health the Chief Justice found it necessary to give up his work as Chairman of this Commission; and after waiting for some time in the hope that he would recover sufficiently to resume his duties the government felt compelled to accept his resignation with the deepest regret, and thus relieve the Chief Justice of the responsibilities of his position.

It would be impossible adequately to express the regret that the other members of the Commission feel at the loss of our Chairman. Throughout our deliberations we have benefited greatly from Mr. Rowell's great learning, his knowledge of men and things, his keen mind, his remarkable tact and his smiling courtesy. We were happily permitted to enjoy his leadership and advice throughout almost all of the public hearings, and for the character of our Commission, its method of approach to the great problems facing us, and its technique for attempting a solution, we are largely indebted to Chief Justice Rowell.

In the research problems which the Commission has carried on, Mr. Rowell was active in planning the nature and scope of these studies, and he had the all-important task of selecting the personnel of the research staff.





Thus although we shall be without his invaluable aid in the final stages of our deliberations we are able to retain much of the benefit of his work with the commission. My colleagues and I will endeavour to follow the course which Chief Justice Rowell set for us.

For some weeks the commission has been meeting in continuous session examining the voluminous evidence and briefs which have been submitted, and considering the reports of our research assistants which as yet have not been made public, awaiting examination and checking by the provincial governments.

We are now meeting to hear supplementary submissions from those provinces that have signified a desire to address further material to the commission. This will be, we expect, the last public sittings of the commission, and when in a few days these hearings are concluded we shall resume our study of the many problems that have been presented to us, and shall prepare our reports with all speed consistent with a full and careful examination of the many difficult matters which arise for consideration.

TRIBUTE TO MR. ROWELL BY COMMISSIONER DAFOE

COMMISSIONER JOHN W. DAFOE: Mr. Chairman, speaking for myself and as well for my colleagues, Dr. MacKay and Professor Angus, I desire to associate myself with what you have just said about our former chairman and also with the well deserved tribute paid to Mr. Rowell recently by the Prime Minister.

Chief Justice Rowell's colleagues more than others understand the value of the services he rendered while chairman of this commission and how great is the loss to the commission, and through it to the country, caused by his enforced withdrawal.

But we, and again I speak for my former colleagues, congratulate ourselves, and we venture to extend our



congratulations to the country, that we have as successor to Chief Justice Rowell in the chairmanship one so admirably fitted to take up the heavy burden of the Chairman as Dr. Sirois. In this again we speak with knowledge for Dr. Sirois has been discharging these difficult and responsible duties since last May with a tact and ability which have commanded our admiration, and which give the assurance that the task which Mr. Rowell was compelled to lay down is in competent and trustworthy hands. We his colleagues are proud to be associated with him in the public service to which we have all set our hands.

THE CHAIRMAN: May I just say, Dr. Dafoe, how grateful I am for such kind expression of your thought, and how grateful I am to all my colleagues for their unfailing courtesy and their friendliness. We are indeed like a family, inspired by a great presence which is still felt among us and will be to the end of our labours, and with that same unity of purpose and mind we shall strive to attain what the government and the whole country expects from us. I rely upon the experience and the judgment of my colleagues, and with their kind cooperation I look forward with confidence to a successful completion of our work.

PREMIER A.A. DYSART (New Brunswick): Mr. Chairman and Members of the Commission, on behalf of my associates representing the province of New Brunswick I should like to associate myself with the very kindly remarks made by yourself, Mr. Chairman, and by your colleague Dr. Dafoe, respecting our good friend Chief Justice Rowell.

Personally it was my good fortune years ago to have the privilege of meeting him. At that time I think he was a member of the Board of Administration. Then there was a lapse of years, and again I met him in Fredericton, just prior to the sittings of this Commission. On all these





occasions one sensed the finer instincts and saw in the person of Mr. Rowell a true, learned and scholarly gentleman. The country has been fortunate in having his services, and unfortunate in that his services have been practically discontinued on such short notice, but I am sure that the inspiration he gave to his fellow members of the commission will continue with you to the end of your labours. I cannot say more at the moment than that the country, the commission and all those who have been associated with your work and his will feel the loss increasingly, possibly, as the years go by.

THE CHAIRMAN: Shall we now proceed with the supplementary submission of New Brunswick?

SUPPLEMENTARY  
SUBMISSION BY NEW BRUNSWICK

PREMIER A.A. DYSART: If I might speak, Dr. Sirois and members of the commission, may I say that we have been very deeply impressed by the practical and diligent attention which you are giving to the enormous task entrusted to you. Both directly and indirectly, through the agency of your staff we have received throughout sympathetic cooperation and have been encouraged to discuss without restraint the facts and views which we have considered pertinent to this inquiry. Since the outset it has been our sincere desire to give the fullest support to the commission.

Our first submission made to you in Fredericton was based upon years of experience and was the result of deep study and research. Your reaction to that submission has prompted us to continue our studies, the results of which we desire to submit to you to-day through Mr. Jones.

In presenting our case we have been prompted by a desire to promote national unity. We have had consistently in our minds the aspirations and purposes expressed in



the second paragraph of the preamble to the British North America Act, which I quote:

"And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:"

New Brunswick is vitally interested in the preservation of the Confederation and deeply concerned in the wellbeing of the British Empire. Our views have been predicated on the principle that Canada must be strong to enable the Empire to be strong, and that the welfare of the individual provinces is essential to the solidarity of the Union.

We have sought to show how in our opinion these purposes might be achieved, and to throw light on those features of the constitution hitherto largely neglected that will promote the fundamental purpose for which Canada was created, namely, the welfare of the province and the interests of the British Empire, and to provide a solution to many of the problems now confronting the nation.

I know, gentlemen, that you have no misconception of the attitude of New Brunswick towards the Confederation and the Empire. From time to time, however, the position of the province has been misrepresented in certain quarters, and I desire now to make this very definite statement: Anyone who suggests that New Brunswick wishes to withdraw from Confederation is lacking in appreciation of the spirit and aspirations of our people and is ill informed regarding our presentation to this commission. Now Brunswick is seeking only to shape a course that will make this Confederation great and cause it to realise the expectations of its founders.

In the neighbouring republic it is required that school children know the Constitution. Public men must swear to uphold the Constitution. Newcomers to the country must





learn and swear allegiance to the Constitution.

Our Constitution is our chart and compass. It is our firm conviction that those who established this Union laid down a constitutional plan in the London agreement and enabling Imperial legislation that will serve to solve the major problems of to-day. Of greatest present need is a better and more intimate understanding of our Constitution as it is, and a faithful observance of its principles and provisions. Even under these conditions it may be found with the passing of years that constitutional amendments are necessary; but then is the time to consider what changes are necessary and to proceed to have them made in a constitutional manner. In that event, as now, New Brunswick will be found faithful to the best interests of this Confederation and the Empire.

I should like, Dr. Sirois, Mr. Chairman, to express on behalf of my associates here our congratulations to you on your elevation to this important position, feeling confident that with the aid and assistance of the able men you have about you and with that splendid attitude of mind that enables you to look carefully through all the presentations made a full measure of justice will be done to the interests that we are here to-day to represent.

THE CHAIRMAN: I thank you, Mr. Premier, and you may be sure of our entire good will. Is Mr. Jones now ready to proceed with your submission?

HON. W.P. JONES, K.C.: Mr. Chairman and gentlemen, it is unnecessary for me, in view of the remarks of the Premier, to make any opening remarks and with your permission I should like to read certain portions of the supplementary Brief, and I presume that as I proceed certain questions may be suggested for discussion, and I shall be very glad to explain so far as I can our



position with reference to any of these matters.

SUPPLEMENTARY SUBMISSION BY NEW BRUNSWICK

HON. MR. JONES: I am now reading from the Brief:

"There appears to be on the part of some writers a serious misconception of the fundamental principles upon which the Confederation of the Provinces of British North America was founded.

Incorrect statements in histories and misleading propaganda, circulated for many years, have influenced the people generally and especially those not native born to believe that Canada is a union of people similar to that of the United Kingdom and that the government and Parliament of Canada should function in the same manner as the government and Parliament of that union.

The administration has been carried on with that mistaken view of Confederation.

Before Confederation the three provinces of Canada, New Brunswick and Nova Scotia were separate self-governing units in the British Empire. Each Province had its own identity and its own difficulties. Each had problems respecting revenue, highways, railways, education, public health and many other matters. These three provinces agreed that their interests might be promoted if they caused to be created a corporation for the administration of certain matters common to all of them and for their mutual benefit as provinces.

This incorporation was arranged by inter-provincial agreement to which certain Imperial legislation gives effect. Thus Canada was created. (Section 4 of the Act.)

The incorporators were the three above mentioned provinces. Each, however, retained its own identity,





"independence and autonomy under the Crown. All of the financial and other arrangements dealt with by the scheme of union were matters of interprovincial agreement and subsequently were matters between the Dominion and the provinces, as provinces, regardless of population.

The arrangement may be likened to the case of three existing corporations agreeing among themselves that for certain expected benefits there should be another company formed, with power to perform certain services for the corporations."

MR. STEWART: Mr. Jones, you do not think an analogy between the Dominion and a corporation can be pushed very far, do you?

HON. MR. JONES: There are, of course, so many other considerations, but this is simply to illustrate one particular point, that the incorporators were the provinces as units.

MR. STEWART: For instance, it would be an anomalous situation, would it not, for three existing companies to pass over to a fourth company the permanent right to deal with these three companies in its discretion and retain no voice whatever in the management of that fourth company? That would be a very anomalous situation in the business world, would it not?

HON. MR. JONES: Yes. Perhaps the analogy would not hold the whole way through in all the possible ramifications, but my idea in suggesting that was simply to show that there was something in the nature of incorporation of the provinces as units, and not as representing the people of Canada generally.

MR. STEWART: Then we can push the anomaly a little further, can we not, when you take into consideration the fact that Canada, the fourth corporation, has a veto



power over the acts of the three constituent companies?

HON. MR. JONES: There is that veto power, and it is a very important power of the Dominion. Speaking of the Dominion as a strong government, we could point to that power as one of the elements that make it a strong government. But you see, Mr. Stewart, this is simply an analogy, and it might not run through all the ramifications. I am using it simply to illustrate the point that there were three units which were instrumental in having this Confederation formed.

MR. STEWART: Then again, we must bear in mind section 94, that uniformity of legislation clause, which in this corporation analogy that you have suggested would involve the transference to the fourth corporation, the promoting corporation as it were, even more extended powers to be exercised in the discretion of the incorporator, the fourth company, without representation on the part of the constituent companies.

HON. MR. JONES: Yes, if anybody knew what that section means, but very little attention has been paid to it.

MR. STEWART: Quite so.

HON. MR. JONES: But I quite agree that it would have given them very large powers. However, my point is that they were in the same position practically. The incorporators were units; they were not different classes of people; they were simply units; and I speak a little later on of the welfare of the provinces as provinces.

MR. STEWART: If that had been the intention, Mr. Jones, don't you think the constitution of the Dominion would have been somewhat different and that the Members of the House and Senate would have been appointed by the provincial governments?

HON. MR. JONES: That is what they should have been



anyway. The members of the Senate should have been appointed by the provincial legislatures or possibly by the governments. I am not saying that the Fathers of Confederation, so called, made a perfect arrangement. I think myself that when they left so much to the good will -- I will not say to the honesty-- of parliament they made a very grave mistake, and they might originally have more clearly safeguarded the interests of the smaller provinces.

MR. STEWART: In reality did they not vest the ultimate authority in the people of Canada generally in respect of all functions assigned to the Dominion -- speaking of Canada generally?

HON. MR. JONES: They vested in parliament exclusive control only in respect to those matters over which parliament had jurisdiction.

MR. STEWART: Quite.

HON. MR. JONES: And that is all. They did not vest in the Dominion parliament any powers covered by section 92 that were the property of the province.

MR. STEWART: And when they vested it in parliament they gave the ultimate power to the people of Canada generally, to whom they made parliament responsible.

HON. MR. JONES: So far as that jurisdiction was concerned, and they gave power to the different provinces so far as provincial jurisdiction was concerned.

MR. STEWART: Indirectly they also vested in the people of Canada generally the power to disallow any provincial legislation which might not appeal to the people of Canada generally.

HON. MR. JONES: Yes of course, that is clear enough, but at the same time I say that perhaps the mistake that was made was to depend too much upon -- I will not say the integrity -- but the faithfulness of Dominion administrators,





who afterwards proved to be more concerned with the general advantage, we will say, of Canada -- the central provinces of Ontario and Quebec -- without regard for the outlying portions of the Union.

But I do say this, that there is a provision in the British North America Act itself which indicates what the duty of the Parliament of Canada is, that in all its legislation its first regard should have been the welfare of the provinces and not the welfare of the Dominion generally -- of Ontario and Quebec -- nor the welfare of the United States of America or any other country. That is one thing that I seek to point out in this submission. As Mr. Stewart intimates, the Act gives great powers to the Dominion, but I say that it also lays down quite clearly what the attitude of the Dominion should be towards the provinces, and that is what I want to develop.

Continuing with the Brief:

"This fundamental principle has been

misunderstood and disregarded by some writers."

I say that with all respect because we have very learned men who apparently do not observe that particular principle about which I have just been speaking. The Act is clear as to the objects of the whole Confederation. There are just two main objects, that is all: the welfare of the provinces, and the interests of the British Empire. What is the preamble to the Act? It indicates what the legislation is for. I might ask any tribunal such as this or any public body whether as a matter of fact in this Dominion Parliament has ever had regard for the welfare of the provinces as provinces? whether it has had regard to the welfare of New Brunswick as against the general interest of Canada.

At our last hearing it was suggested by the Commission, I think, that the strong men that we had sent up to



Parliament from time to time must have failed in protecting provincial rights; but as I pointed out there, those men, and they were strong, when they were sent up from the outlying province and reached Ottawa and got into the Dominion Parliament, their responsibility was a general responsibility to the people of Canada generally, and it would be rather not in keeping with their public duties to be so strongly partisan in favour of their province as though they were representing the province themselves.

MR. STEWART: Just on that point, Mr. Jones, when you speak of the province, do you mean the government of the province or the people of each province?

HON. MR. JONES: I mean the government of the province, as being one of the units of the Union -- the government of the province with its own problems which it must solve -- those provinces which expressly desire to be federally united.

MR. STEWART: On this other point, the attitude of the representatives in parliament from New Brunswick constituencies and the view they should take, if you are right in your view, when they get to Ottawa they should legislate for the benefit of the province as a province ~~and~~ they must have been ~~derelict~~ in their duty if they have legislated for the general welfare of Canada. Is that not so?

HON. MR. JONES: Yes, to that extent. Perhaps not derelict, but forgetful, if you like.

MR. STEWART: Derelict is perhaps a little too strong a word to use, but they have forgotten the main purpose of Confederation?

HON. MR. JONES: Yes, but I am not sure about using that word or other words that might be used because the members of the provincial government are not anxious to reflect in any way upon any public man. The whole thing





has grown up perhaps through carelessness; but we make no reflection upon the men, and any criticism that is made about writers and other people is made with the greatest possible respect.

MR. STEWART: Perhaps the best expression is that they have misconceived their duty?

HON. MR. JONES: I think that is very good, and I say something later on about misconception. Continuing with the Brief:

"Having the above in mind let us consider what the Confederation scheme was.

The whole object of Confederation was the welfare of the Provinces and the interests of the British Empire. This is clear from the preamble to the Act of British North America.

Immediately after Confederation and with the evident intention of accomplishing these objects the Department of a Secretary of State for the Province was established at Ottawa. It was no doubt at that time expected that there should be constant cooperation between such Department and the Governments of the Provinces."

I mention that as showing that immediately after Confederation, as early as 1867, this Department was established by legislation, and it bears out, I think, the construction that I seek to place upon that Act, as it shows there was a demand made that there should be cooperation with the provinces through this Department.

MR. STEWART: Have you looked in Hansard at all to ascertain the reason for the appointment of such a Minister as Secretary of State for the Provinces?

HON. MR. JONES: I think so but I can't just recall now.

MR. STEWART: Was it not primarily to deal with the



Lieutenant Governors in the exercise of their duties?

HON. MR. JONES: I am not in a position to say, Mr. Stewart, as to that, but at any rate it seems that they must have exercised their duties, and evidently while this position was created in 1867 the Department found nothing to do because it was abolished in 1873. Have you yourself found any reference to it in Hansard, Mr. Stewart?

MR. STEWART: I cannot say that I can put my finger upon it.

HON. MR. JONES: I think it clearly bears out my construction of the Act, in the absence of anything to the contrary, that there was to be cooperation between the Dominion and the provinces themselves in order to carry out the intention which I say was in the Act.

Continuing:

"After a few years, nothing further having developed along the line of cooperation, the Department at Ottawa was abolished and Parliament undertook to administer affairs without consideration of the welfare of the Provinces, as Provinces.

The only manner in which the welfare of the Provinces could have been advanced would have been the adoption of what might be referred to as a national economy as opposed to an international economy.

It is quite apparent from the declarations made at the time of Confederation that the purpose of all parties was to avoid any necessity of conducting trade through United States territory and United States ports. The development of trade through all British channels was the keynote of all the speeches."



MR. STEWART: Do you think, Mr. Jones, that there is expressed anywhere in the British North America Act or in the London resolutions the fact that all Canadian trade should be forced through Canadian channels?

HON. MR. JONES: They do not use the word "forced".

MR. STEWART: Should be compelled to go through Canadian channels?

HON. MR. JONES: It may not go quite so far as that, but in the resolutions of the London Conference the improvements required for the development of a great trade between the Great West and the seaboard are matters of the highest importance, and it was brought out in all the speeches that were made that in the winter season especially the trade between East and West had to go through the United States. It is not necessary for me to remind this commission of the public statements that were made along that line, that we were at the mercy of the United States, and that we should make ourselves independent of them by the creation of these transportation facilities, which would make Saint John and Halifax two great ports. That was the keynote, although it may not have been directly expressed in the Act.

MR. STEWART: It was one of the things required by the Province of Canada that they should have an outlet over which Canada should have control, rather than be forced at all times, or particularly during the winter season, to send their goods through American ports.

HON. MR. JONES: Yes, but it has to be taken in connection with the other statements that were made as to the development of traffic through British territory.

MR. STEWART: You deal with that more fully a little later?

HON. MR. JONES: Yes. Continuing:





"But before many years had elapsed after the union this fundamental principle of Confederation was evaded. Parliament seemed to have abandoned regard for the welfare of the Provinces in this respect. It did not adopt the principle of national economy but it proceeded to develop, in the most pronounced form an international economy. It spent a great many millions of dollars, not for the development of trade through British channels but for the development of trade through the United States, and this has continued as a matter of policy to the present time. The result has been that Confederation has not conduced in any way to the welfare of New Brunswick and has been disastrous to this Province."

MR. STEWART: In connection with this development were not great expenditures made by railway companies before the Dominion had any interest in them whatever -- I mean expenditures on railways and ports in the United States?

HON. MR. JONES: Probably considerable, but there has been a recognition of that, and of course the Dominion had to take over some of these railways.

MR. STEWART: In the position of a creditor?

HON. MR. JONES: Something of that kind, largely, but at the same time they continued without any effort apparently to lessen their investments in the United States.

MR. STEWART: I notice that on the next page of your Brief you refer to three hundred millions of public money of Canada invested in the United States. Have you any general details of that?

HON. MR. JONES: I think there was a table attached to our first submission or an Exhibit put in



at the hearing, showing what investments were made in the United States.

MR. STEWART: Referring for a moment to the last paragraph you have just read:

"The result has been that Confederation has not conduced in any way to the welfare of New Brunswick -- "

First of all, the Canadian Pacific Railway has its own terminal at Saint John?

HON. MR. JONES: Yes.

MR. STEWART: Don't you think that that was done in pursuance of the policy set out in section 66 of the London Declaration?

HON. MR. JONES: That might be regarded as one of the gestures made, indicating the opinion of Ottawa at the time as to what their duty was. It might have been one of the elements in the same way that the Transcontinental was. They were similar gestures. But we say that the port was not developed to handle our reasonable percentage of the traffic of Canada.

MR. STEWART: Then in the preferential agreements was not provision made for preferences provided the traffic went through Canadian ports?

HON. MR. JONES: Yes, that is what I say too. There was a belated gesture there. It all indicates -- I will not say that Parliament had a guilty conscience -- but at all events they were coming to a realization that they must do something to satisfy these Maritime people who were always complaining, and so these feeble efforts were made. My view is that this traffic should have been forced, Parliament should have forced a reasonable amount of this traffic to the outlying provinces and have developed our ports. I do not mean to say that none should have been sent to the United States, but I say





that we should have had reasonable treatment.

MR. STEWART: I just make this suggestion, that you would modify, would you not, your statement "that Confederation has not conduced in any way to the welfare of New Brunswick."

HON. MR. JONES: I do not know that I can modify that because we have to consider what wonderful things the provinces have done.



We could have developed a tremendous manufacturing industry - that is to say, tremendous relatively - because we could have had a protective tariff against the upper provinces. That is what we needed more perhaps than anything else in the world. During my whole lifetime, which has been contemporaneous with confederation, we have paid tribute to the manufacturing industries of Ontario. We have sent nothing back to them, or practically nothing. That condition has been due to the fact that the effort has been made to have Canada become a nation. Canada must be a nation, we have been told, and therefore, the people down by the sea have had to be hewers of wood and drawers of water. As a matter of fact, having had to receive the manufactured products of upper Canada, our manufacturing industries have been destroyed - our carriage factories, of which there were a few in the province, our tanneries and other local industries.

Mr. STEWART: Do you think it was confederation that did that, or was it due to a change in manufacturing methods and a change in trade generally ?

Mr. JONES: I believe it was the national policy of 1878. The process started with that policy, which gave encouragement to the manufacturers, and all governments since that time have afforded that section of the community protection. I submit that the manufacturers should stand on their own feet if they are ever going to stand on their own feet. Here are manufacturers shipping products all over the world, and yet we are obliged to pay tribute to them. We do not pay customs duties, of course, because goods are not imported, but we are putting money into the pockets of the manufacturers. I do not say this for the purpose of reflecting on anyone; I simply state what I believe is the fact. In my opinion the manufacturers started in 1878 to build up their



industries in the central provinces, and that has all led to the centralization of banks, the centralization of money, the centralization of everything else in those provinces - not only manufacturing, but everything else. In those provinces we find the head offices of all the financial corporations from which are pulled the strings that govern the country. I say, therefore, that the effect has been disastrous; New Brunswick would have been much better off without it. But trusting Ottawa, and relying upon the fact that this legislation at Ottawa was stated to be for the welfare of the provinces, the people allowed Ottawa to appoint Senators and to have the power of disallowance, instead of having Senators appointed as representatives of the provinces, from and by the provinces, through the legislatures.

Sir John Macdonald was a wonderfully wise and efficient man, as we all know, but of course he had regard to the province of Canada as it was at that time.

MR. STEWART: We failed to fear him when he was bringing gifts; is that it?

MR. JONES: I am afraid so. To continue:

Parliament was charged with the duty to regulate trade and commerce between the provinces. There should be a reasonably proper regulation. There is no power in parliament to switch the trade of Canada through a foreign country, but there is a duty to so regulate trade and commerce as to effect the purpose of the confederation compact by promoting a sound national economy.

It is true that there have been spasmodic gestures looking to the development of the trade through British channels but such gestures prove to be of no material importance.

The incorporating provinces have not, as yet, succeeded





in curbing the ever-growing preferences which are being extended to the United States. Nearly three hundred millions of the public money of Canada are invested in the United States for the development and operation of railways, harbour facilities and even coal mines in that country. With the proper compliance with the principles of confederation, the development thus represented should be within British territory.

MR. STEWART: Just at that point, Mr. Jones. From your argument, that the Dominion should regulate its affairs for the benefit or welfare of the provinces, if it should be for the welfare of certain provinces that trade should be developed through those provinces, and it is detrimental to certain other provinces that that should be done, what is to happen?

HON. MR. JONES: There should be compensating provisions in some form for the other provinces in order that the welfare of all the provinces might be safeguarded.

Mr. STEWART: Along the lines of implementation of the Duncan award, for instance?

HON. MR. JONES: I am not suggesting what line it should take.

MR. STEWART: You would call these to some extent compensating adjustments?

HON. MR. JONES: I do not know that you could say that they were as regards this particular feature; it might have been on the ground of fiscal need or for other considerations. My point is that if any policy inured to the welfare of one province - it might be in connection with manufacturing on a vast scale - it was the duty of parliament, under this act, to consider the welfare of all the other provinces. The other provinces might be starving, having



no industries nor other businesses, and here is one province raised to a high standard of efficiency and welfare. Surely to goodness it could not be said, under such circumstances, that the Dominion parliament would be carrying out the design indicated in the act if they were to keep on encouraging the progress of one province while making no effort to secure the welfare of the other provinces. That is what happened, not perhaps in that extravagant way; nevertheless that is what happened, and that is the principle that I wish to illustrate. I submit that it was their paramount duty to promote the welfare of all the provinces and the interests of the British Empire. Those were the two objects of confederation.

Who can imagine that the province of New Brunswick would have consented to enter the union unless there was a distinct belief on the part of the fathers of confederation in that province that these objects would be carried out? The fact that they did not protect themselves sufficiently left too much to the good conscience of the dominion politicians. Of course, that was in a sense the weakness of their case. At the same time, the dominion represents the King, and I take it that anything that is fair will be done. I know that this commission will recommend what in all fairness ought to be done.

The fact that seventy years have gone by is no excuse. There might have been, I was going to say, very dark ages when there was a failure to recognize generally the principles of Christianity, but that recognition came again after four hundred years. As I say, a period of seventy years is no excuse for the difference between His Majesty in right of the Dominion and His Majesty in right of the provinces. We are just as near the Confederation pact to-day, as laid down in that act, as were the people of





seventy years ago. The question is, what is right? What does the act mean? What are the objects of Confederation?

New Brunswick would never have taken the step it did unless it placed implicit reliance on the Dominion government to carry out what was understood to be the agreement, and perhaps the reason was that Sir Leonard Tilley was going to Ottawa. He and other strong men from the Maritimes were going to Ottawa and the people believed that there would always be men of that type. I pay tribute to him because he is one of the leading New Brunswick men in the history of the province. The people might have thought that there would be always men of that type - and let me say that I cast no reflection on those that succeeded these men. The fact is, however, that the objects of confederation have been lost sight of.

Of course, there was a great deal of dispute about Senate appointments at the time the agreement was made, but the provinces did have the view that the object was the welfare of the provinces. I continue with the brief:

"All of this has been to conduce to the welfare, not of the provinces, but of certain communities in Ontario and Quebec, and in the United States. The people of the province of Ontario have for the past seventy years been educated in the belief that parliament owes no particular duty to the outlying provinces but has the right to deal with all the people of Canada as if the particular units which were the incorporators of Confederation did not exist. Parliament has erroneously assumed that its duty is toward the people of Canada generally. Its duty is toward the provinces, as provinces."

Mr. STEWART: Just at that point, Mr. Jones, may we turn to section 91 of the British North America Act. How



could the Dominion deal with the provinces in respect of, say, postal services? How could they have in mind the welfare of the provinces as provinces in dealing with the postal service?

HON. MR. JONES: Well, possibly they could not have made any distinction except to provide the same facilities.

MR. STEWART: That is, to the people of the provinces rather than to the provinces.

HON. MR. JONES: No; it would be more or less to the government of the province. The government of the province is answerable to the people in regard to public affairs, just as much as the Dominion government is answerable to the people at large. However, you have selected there a matter regarding which there cannot be as much criticism as is justified in respect of some other matters.

MR. STEWART: Perhaps we might run over a few of the subjects enumerated in section 91. Take for instance currency and coinage. How could the Dominion exercise its jurisdiction in connection with currency and coinage for the benefit of the provinces as provinces, as distinct from the benefit of the people of Canada as a whole?

HON. MR. JONES: Well, they have actually encouraged the incorporation of all the banks.

MR. STEWART: That is another power; that has to do with banks and banking. For the moment I am referring to currency and coinage.

HON. MR. JONES: Well, they have adopted a tariff.

MR. STEWART: Take another item, bills of exchange and promissory notes, or interest, legal tender, bankruptcy and insolvency, patents of invention and discovery, copyrights, naturalization and aliens, marriage and divorce, the criminal law. What have you to say with regard to all these items?

HON. MR. JONES: As regards naturalization and aliens,



that is a question that comes up prominently in British Columbia. I am not arguing anything about that at the moment, but there might very well arise some question with regard to the welfare of British Columbia from the standpoint of aliens.

MR. STEWART: But in section 91 they are directed to make laws for the peace, order and good government of Canada in relation to these things, and not of the provinces.

HON. MR. JONES: Oh, that is very true, but they must have regard to the objects of the union.

MR. STEWART: Quite so.

HON. MR. JONES: They can do all these things subject to the objects of Confederation. Those objects are the welfare of the provinces and the interests of the British Empire.

MR. STEWART: I was simply testing your proposition that parliament has erroneously assumed that its duty is towards the people of Canada generally, whereas its duty is towards the provinces as provinces, and I am suggesting that these particular functions of the Dominion government, to which I have referred, can hardly be exercised for the benefit of the provinces as such, but must be exercised for the benefit of the people of Canada as a whole.

HON. MR. JONES: Perhaps that is perfectly true in relation to those particular items you have enumerated; and yet the Dominion, speaking generally, may be said to have disregarded its duty.

MR. STEWART: Have you the British North America Act in front of you?

HON. MR. JONES: No, unfortunately I have not.

MR. STEWART: I was wondering whether you could apply your proposition to any one of the powers enumerated in section 91. I did not refer to militia, military and naval





service and defence, the census and statistics, public debt and property and the raising of money by any mode or system of taxation. I did not mention the borrowing of money on public credit.

HON. MR. JONES: That is one to which my proposition would apply - the raising of money.

MR. STEWART: You think that is one power that should be exercised having regard to the welfare of the provinces rather than of the people of Canada.

HON. MR. JONES: Yes, having regard first to the welfare of the provinces.

MR. STEWART: Other items are beacons, buoys, light-houses and Sable Island. Another item is the fixing of and providing for the salaries and allowances of civil and other officers of the government of Canada; the establishment, maintenance and management of penitentiaries; and such classes of subjects as are expressly excepted in the enumeration of the classes of subjects set out in section 92.

HON. MR. JONES: If I could see the act I might be able to follow it more intelligently.

MR. STEWART: I will pass it over to you.

HON. MR. JONES: The first item with respect to which, I might point out, they might easily have exercised the power in the manner suggested is the regulation of trade and commerce. They might have so regulated trade as to bring into effect what I have indicated to be one of the designs of Confederation, namely, the development of British trade through British channels. Take, again, the item with regard to the raising of money by any mode or system of taxation. Of course, there is the question of the sales tax, the protective tariff, the customs duties, whereby they raise money. As a matter of fact, in most of the provinces that question has been threshed out before the commission. The protective



tariff has had an injurious effect on the outlying provinces in favour of the centralization of industry in Ontario and Quebec. We do not say that all these other items that you have enumerated have been made the subject of discrimination. So far as most of them are concerned, we have no complaint to make about discrimination. We do not complain about discrimination in ordinary matters like the post office, but there are other respects in which we do submit that there has been discrimination. Take the regulation of trade and commerce and the raising of money by any mode or system of taxation. Again, there is item number 11 with regard to navigation and shipping; there you enter into the question of ocean transport. Take again item number 12, sea coast and inland fisheries. Of course, we have a special claim in regard to the Halifax award which, with the permission of the commission, I will refer to in a few moments. Take again the question of currency and coinage, the incorporation of banks and the issue of paper money; they could easily discriminate there by having the banks all located with a view to centralization. As a matter of fact, the head offices of the banks and of the insurance companies are now located in the centre of Canada instead of being by force placed in positions where they would protect the rights of the provinces farther away. That is another item. We do not make any complaint in regard to the subject of naturalization and aliens, but with respect to those matters about which we do complain we do say that we have not been rightly used.

MR. STEWART: If your proposition is valid, Mr. Jones, then there is no such territorial unit as Canada. Am I right in that?

HON. MR. JONES: Substantially, yes.

MR. STEWART: There is no such thing as Canadian





citizenship?

HON. MR. JONES: Except by generally accepted definition. We are all referred to as Canadians.

MR. STEWART: Perhaps "Canadian" is a courtesy title; as a matter of fact, in your view, we are Nova Scotians, New Brunswickers, and so on.

HON. MR. JONES: Something of the sort, yes. They are all designated together, this Confederation, as the Dominion of Canada, just as the States in the American union are designated the United States.

MR. STEWART: But according to your proposition "Canada" is simply a compendious term to describe a bundle of legislative and executive functions.

HON. MR. JONES: Yes. I do not know whether the same analogy was put forward at the time of Confederation, but in any confederation it must necessarily be so, I think, because it is a union of independent states for certain purposes, and the central authority has the right of naturalization and all that. I do not know, however, that you could definitely make a statement one way or the other. The union is one of several independent states and the conditions must depend upon the agreement of union and we must therefore look to the agreement and to the legislation which established the union.

MR. STEWART: Your original proposition was that the operation that resulted in the Dominion was simply the creation of an entity for the purpose of transacting certain legislative and executive functions on behalf of and for the interests of the provinces.

HON. MR. JONES: Practically that, yes. The provinces had all these powers themselves prior to the time of confederation. They simply relinquished certain powers to this separate organization or corporation. May I now



continue with the brief?

"That the welfare of the provinces was the paramount consideration in the confederation scheme is clearly indicated by a change that was made by the delegates in London in the London Resolutions as originally drafted. It will be remembered that there were two conferences in London, the first at which the London Resolutions were drawn up and the second at which the delegates collaborated with the law officers of the crown in the drafting of the bill which afterwards became the Act of British North America.

"In the Quebec and London Resolutions as drafted, in the enumeration of the various powers of the general government there was this statement, 'The general parliament shall have power to make laws for the peace, welfare and good government of the Confederation.'

"In the drafting of the Bill the delegates found that such expression in the Act would be distinctly contradictory to the main purpose. That having stated in the preamble that Confederation would conduce to the welfare of the provinces, it was entirely inconsistent to state that the general government would have power to legislate for the 'welfare' of Canada.

"The word 'welfare' in the last mentioned clause was changed by the delegates at their second conference and the word 'order' was substituted therefor, the clause reading, 'to make laws for the peace, order and good government of Canada.'

"We regard this change as conclusively establishing the proposition that Confederation was designed for the welfare of the provinces. We think there is no other possible meaning to be drawn from the transposition of the two words as mentioned. It was done to



emphasize the fact that the Confederation was formed for the provinces and for the welfare of the provinces, as provinces."

MR. STEWART: In that connection, Mr. Jones, have you looked for other cases where either the expression "peace, welfare and good government" or the expression "peace, order and good government" has been used in constitutional documents?

HON. MR. JONES: Some writers, I have observed, hold that the words are interchangeable, but in my opinion such a construction cannot be put upon them taking them in their dictionary meanings.

MR. STEWART: There is a rather striking case in Canadian history, to give one example. In the royal proclamation following the treaty of Paris of October 7, 1763, this expression is used:

"We have also given power to the said governors, with the consent of our said councils and the representatives of the people, so to be summoned as aforesaid, to make, constitute and ordain laws, statutes and ordinances for the public peace, welfare and good government of our said colonies...."

And so forth. In the instructions to Governor Murray, of December 7, 1763, made pursuant to the same proclamation, section 11 declares:

"You are in the meantime to make such rules and regulations, by the advice of our said council, as shall appear to be necessary for the peace, order and good government of our said province."

It would not be fair to ask you offhand whether in your opinion the two terms as used there are interchangeable, but I am suggesting that the two expressions as used in these two documents, practically contemporaneous documents,





indicate that they were used in exactly the same sense. I understand there are many other instances, both in Australia and in Canada of the two expressions being used without any apparent reason for having a different purpose in mind.

HON. MR. JONES: With all due respect, I cannot see what there is in that.

MR. STEWART: I am not asking you to express an opinion at the moment, Mr. Jones; you would have to read the context and give it some consideration. I am merely throwing out a suggestion.

HON. MR. JONES: The meanings are quite different. Shortly, my contention is that there must have been a good reason for the use of these words. There must have been a reason for the change in phraseology.

MR. STEWART: On the other hand, Mr. Jones, do you not think that the change in wording is in other respects significant? In the original resolutions the expression was "peace, welfare and good government of the Confederation."

HON. MR. JONES: Yes.

MR. STEWART: But in the Act it became, "peace, order and good government of Canada."

HON. MR. JONES: Yes. In the earlier resolutions it was "peace, welfare and good government of the federated provinces," and that might convey the same idea that they afterwards developed when they made it a part of the preamble that it was for the peace, welfare and good government of the federated provinces. But evidently the last agreement, which, of course, was the construction put upon it by the Act, left out the word welfare. The word welfare was taken out and put in the preamble in order to emphasize the main objects of confederation.



MR. STEWART: And at the same time the subject with respect to which the change was made was the confederation; the change was from confederation to Canada. If your main proposition is correct, that it was the welfare of the provinces that was imposed as a duty upon Canada, do you not think that that would be the ideal place in which to make that intention clear.

HON. MR. JONES: Not necessarily, because they were treating there as to powers of the Dominion parliament.

MR. STEWART: The powers of the Dominion parliament - in what field they were to be exercised, and for whose benefit?

HON. MR. JONES: Yes. Possibly they might have made the position stronger and I should have less trouble in carrying that point now. At the same time, however, I doubt whether it would be necessary.

MR. STEWART: Apart from the preamble of the British North America Act, do you find any section in the operative part of the act that corroborates your view of the interpretation to be put upon the words ?

HON. MR. JONES: I cannot say that I do directly. The act - the whole act - is not inconsistent with it; rather, it is consistent with it. To continue:

"The Confederation will continue to be weakened until the welfare of the provinces, as provinces, is regarded by parliament as the chief object for which parliament was established.

"Canada can only be great if it carries out its obligations. National unity can be developed and exist only on the basis of a national economy, not an international economy. If the interprovincial agreement had been properly carried out and the United States traffic preferences, so far as reasonably





practicable...."

I do not mean to say, of course, that they could have shut that off immediately or that they should have refused to route any traffic through the United States. For that reason I use the words I do here, "reasonably practicable." I wish to make that qualification.

"If the interprovincial agreement had been properly carried out and the United States traffic preferences, so far as reasonably practicable, abandoned at the time of Confederation, we would see to-day a very different Canada. The trade, developed through British channels, over British railways and through British ports would have built up prosperity, not only in one province, but generally throughout all the provinces, and much greater advances made towards the making of a united nation than have been made through mistaken policies.

"In any federal union each province or state should have a fair deal and centralization of power is fatal to the union. Centralization is unthinkable under the Confederation of the British North American provinces scattered across the continent. If centralization is persisted in by parliament there is an apparent danger that it will destroy Confederation.

"Great Britain lost the American colonies in the attempt to enforce centralization. She learned a lesson, and, as a result, she adopted the policy of decentralization and created a commonwealth of self-governing nations which is to-day the strength of the Empire."

MR. STEWART: Of course it was a different type of centralization that was contemplated at that time, was it not?

HON. MR. JONES: It might have been a different type



of centralization.

MR. STEWART: Speaking generally and in a very loose way, were they not attempting outside centralization? On the other hand, in Canada, there can be no question of outside centralization.

HON. MR. JONES: Of course, the cases are not exactly parallel, but I am discussing the question of decentralization generally. It is more extreme, of course, in the case of outside centralization.

MR. STEWART: Mr. Fowler points out that "outside centralization" is perhaps a contradiction in terms.

HON. MR. JONES: Yes, I rather think it is.

"It is sometimes put forward that the provinces have consented to dominion policy by reason of the attitude of the members of the Dominion parliament. These members do not in any way represent the provinces, as provinces. They are simply a part of parliament and have the right to represent their constituents in respect of legislation which parliament, under the constitution, has power to enact.

"In order that a belated attempt may be made, even yet, to remedy the existing evil, we are strongly advocating in our brief a revival of the department at Ottawa of a Secretary of State for the provinces and the creation in each province of a department authorized to contact with the Ottawa department in the consideration of all matters which may from time to time arise involving any questions between the Dominion and the provinces or between different provinces and the adoption of a truly national policy in order that there may be national unity."

That brings us back to one of our suggestions which we are making to the commission. It seems to me that there has



been a disregard of the spirit of harmony and cooperation, and I suggest that there should be some body which could keep in touch with the provinces, keeping track of their problems - a body which would be in a position to deal with those problems even before they became critical. We have been operating at arms' length from the Dominion. The provinces and the Dominion have all been at arms' length, and very often, owing perhaps to political exigencies, or for other reasons, we have been antagonistic one to the other. Surely there should be a consensus of opinion throughout this Dominion in favour of some such organization as we propose. This is the age of compromise, and it might be that a good many of these difficulties could be made subject to compromise. We feel strongly about it.

It does not matter what the organization is called. Nova Scotia suggested statutory machinery for the holding of interprovincial conferences. In our view that does not meet the difficulty, because it is necessary to have an efficient secretariat in this organization and, moreover, it must be always functioning, under a deputy minister, if you like. The provinces and the dominion should, if possible, be brought closer together.

I repeat, the province of New Brunswick feels strongly about it, because we regard it as offering a solution of practically all our difficulties. Such an organization as we propose would afford a means of getting together with the other fellow and talking things over.

COMMISSIONER MacKAY: Do you think that an organization of that sort is preferable to closer cooperation between the respective departments in the two governments? We are told that there is close cooperation between, for instance, the Department of Health in Ottawa and the Departments of Health in the various provinces. Do you think that having





a separate minister and a separate department at Ottawa to take care of the business between the Dominion and the provinces would be better ?

HON. MR. JONES: I am not suggesting that this separate organization to which I have referred should interfere in any shape or form with any department of government in Ottawa which is working in harmony with the provinces. They might want to keep in touch with such a department. At the same time, it would be absurd to interfere with something that is functioning satisfactorily in that regard. It does seem to me, however, that what we have to consider is the general question with respect to complaints made by the different provinces. We have different royal commissions set up to determine the rights of particular provinces. Let us not have such bodies until a problem is threshed out between the interested parties in order to ascertain what the points of difference are and whether they are capable of reconciliation and of some compromise that will be satisfactory to all concerned.

The commission to which I refer - we will call it a commission, or organization, if you prefer - will be prepared to report to all governments what the difficulties are, but they will not themselves have any power to make decisions finally. Their function will be simply to report to the governments, so that the governments may be kept fully informed all the time as to what is going on in Canada.

At the present time the dominion government does not know what is going on in Canada, or rather, perhaps I should say, in the provinces; whereas through an organization such as we suggest they would be made aware of any complaints that might exist. Of course, complaints are made spasmodically to Ottawa.

As to the proposal put forward by Nova Scotia, we do not



agree with that. I think I am safe in saying that our experience of dominion-provincial conferences has been that the delegates come here and stay for a very short time without getting down to really fundamental business. They are all busy men, some of them very important members of government. An agenda is presented to them; it comes up for discussion and in three or four days time is disposed of. At most, they spend a week here and then perhaps some of them want to go home. The result is that they cannot get down to any real basis of business; they can merely touch the high spots.

If, however, there were in existence such a secretariat as I have suggested, when a dominion-provincial conference was held there would be some concrete recommendations and reports to be submitted to such a conference, and the members of the conference would all have studied the same thing beforehand, so that something definite might be accomplished.

COMMISSIONER ANGUS: Has this recommendation a bearing on the question whether it is desirable that the Dominion should come to an arrangement with one province separately and then with another, or, on the other hand, whether it should consult them all contemporaneously.

HON. MR. JONES: My idea was that everything should be contemporaneous. If we are going to be of mutual assistance we must have mutual faith and confidence, and we must have information upon which we can act. All these questions affecting the relations between any one province and the dominion should be a matter for the consideration of the proposed commission; otherwise the results might be disastrous, because the Dominion could make a trade with one province or another while the others might be in total ignorance of what had been done. The whole thing ought to be ventilated through such a commission.





May I point out that no grants commission would be needed. This commission that we suggest would be in a better position than any grants commission to perform the duties of such a body, because it would have at its fingertips all the facts relating to the entire situation in the different provinces, and month by month, year by year, they would know the conditions as they existed in Canada. That knowledge would accumulate and it would be an easy matter for the commission to decide what recommendations to make. For instance, they would point out that New Brunswick was struggling along in need of so much for certain purposes, and so on. We do not need any grants-in-aid commission if we have this other organization. And if this organization is to be effective it must be constantly operating with a sufficient staff. Then it would be in a position to deal with all these matters such as grants-in-aid, loan councils, if there were such, or any other questions that might be suggested or remedies proposed for the solution of our difficulties.

The CHAIRMAN: I should like to follow up the question put by Professor Angus. As regards proposals made by the Dominion to the nine provinces, suppose eight of the provinces agreed and one refused to give its consent. Do you not think that the constitution should be changed in such a way as to enable agreements to be entered into by the Dominion with the eight provinces that agreed? In Australia there is such a section in the constitution, allowing the Commonwealth to make agreements with some of the states. If that were done here it would obviate one province being accused of preventing the eight other provinces from coming to an agreement with the Dominion. As you know perhaps, there is such a section in the constitution of the Australian Commonwealth.



HON. MR. JONES: What I have to say in that regard is simply this. Generally speaking, New Brunswick is opposed to amendments to the constitution, because that is a very dangerous power to be left in the hands of any single authority. If, however, one province were disposed to be arbitrary in any matter affecting the general welfare of the other provinces, if one province did not wish to give its consent to some proper policy or agreement between the Dominion on the one hand and the other eight provinces on the other, then I suggest it would be a very simple matter to have the Imperial parliament make an amendment which would meet the difficulty if the case were a proper one that called for such action.

COMMISSIONER DAFOE: What do you mean by meeting the difficulty? Do you mean making the dissenting province submit?

HON. MR. JONES: No, I do not think that they would do that. It would depend upon the merits of the case, and whatever amendment might be made, it would have to be brought in by the Imperial parliament.

COMMISSIONER DAFOE: Who would judge as to the merits of the case?

HON. MR. JONES: The Imperial parliament.

COMMISSIONER DAFOE: That is to say, we would carry to the Imperial parliament some question about which the people of Canada were in violent disagreement.

HON. MR. JONES: One province in opposition to eight would not suggest a state of very violent disagreement.

COMMISSIONER DAFOE: It might.

THE CHAIRMAN: Why not allow the Dominion to enter into an agreement with the other eight provinces that were agreeable?

HON. MR. JONES: I do not dispute the wisdom of that



suggestion.

THE CHAIRMAN: Have you any opinion to give on that point?

HON. MR. JONES: If it were necessary to amend the constitution for the purpose, I think it should be done; but I do not think it would be necessary. Of course, we are not making any submission with regard to amending the constitution, and therefore, what I say in this respect is my own personal opinion. We have not presented that question to the Commission, as regards an amendment to the constitution. I believe it was referred to, but the question that I am discussing now I am discussing offhand, and what I say might not represent the views of the government.





THE CHAIRMAN: I think you made that quite clear.

HON. MR. JONES: An amendment to the constitution is a big question. I want to refer again to a question that we dealt with in our original submission, and to which I have been just speaking. I refer to conditional grants in aid. We set it out in our brief as follows:

" Referring to page 6 of our main brief, respecting conditional Grants-in-Aid and Fiscal Need.

The Dominion Government presented a Brief before the White Commission which contains a statement on Page Eighty-six, showing an agreement in principle with our submission in respect of fiscal need, additional grants-in-aid and the application of such grants to the particular object to be aided."

I want just to emphasize that particular part of it, because it was one of our strong submissions, on these grounds: Any aid should be earmarked or should be devoted as conditional grants, and the grants of money applied as directly as possible to the individual or organization which it is intended to benefit. I want to show from this that the Dominion had the same view before the White Commission. They said:

"If there are certain vital functions of government which a province through poverty cannot provide, then it may be that if that function is one which seriously affects the national well-being, the Dominion Government might deem it advisable to aid the province in that respect, but it is obvious that this aid should not take the form of a general subsidy to the province to be spent as it likes. A more effective way of rendering assistance would be to make a grant in aid to be spent in carrying out that function, or for the Dominion itself to take over the function. A general subsidy would not ensure that the function would be taken care of



by the provincial government, whereas it would have a tendency to entrench the province in a position which would enable it to block appropriate changes in the constitution required in order to enable the Dominion to take over the function."

MR. STEWART: Mr. Jones, is that the view of the government as to the basis on which fiscal need should be recognized?

HON. MR. JONES: Well, I will not say that. I am not citing it as being the complete view of the government; I am citing it simply to show it was in the minds of the Dominion Government when they prepared the brief, that these grants-in-aid should be made conditional grants and should be applied to the principal purpose which it is sought to benefit. That is all.

MR. STEWART: The language is rather cautious. It says: "If there are certain vital functions of government ---"

HON. MR. JONES: Yes.

MR. STEWART: Then, they say: " --- if that function is one which seriously affects the national well-being."

HON. MR. JONES: Yes.

MR. STEWART: The language guards the application of it pretty effectively.

HON. MR. JONES: Yes, I know it does. I just want to show that there were certain times when the Dominion government thought that grants-in-aid should be made and devoted to a particular purpose. That is what I want to emphasize.

MR. STEWART: Or, as an alternative suggestion, the Dominion take over the function and operate it itself.

HON. MR. JONES: That is something we do not subscribe to. It is just for the purpose of showing they were not averse to our proposition in certain circumstances.

MR. STEWART: In so far as its approval to conditional grants-in-aid go.

HON. MR. JONES: Yes, that is it. We state:





" Our submission is that the duties of a Grants Commission may properly be performed by the organization that we recommend be set up by the institution at Ottawa of a Department similar to that formerly established and called a Secretary of State for the provinces and a Department in each Province, under a Minister of the Crown. This proposed organization, in addition to the powers of a Grants Commission would effect constant co-operation between the Provinces and the Dominion in respect of all matters affecting Dominion-Provincial relations."

COMMISSIONER MACKAY: If money is to be paid out of the Dominion treasury, Mr. Jones, might not the scheme you propose raise certain difficulties? I cannot quite see the relationship between parliament and this commission or department which you propose in the case of grants-in-aid.

HON. MR. JONES: Well, there would be no change in the principle from what they are doing now.

COMMISSIONER MACKAY: You mean this commission or department, whichever it is, would recommend, that is all?

HON. MR. JONES: That is all, just recommend the same as any other investigating department recommended what in its view a grant-in-aid ought to be, and for what purpose. Suppose it is for education or health, tuberculosis, venereal disease, or something like that. The commission would recommend how much should be paid to the provinces, or all provinces, and to what particular purpose it should be devoted, and earmarked for that purpose, with a check or audit by the Dominion to see whether or not it was devoted to that purpose. If that were done the provinces could not be carried away and use the money for general purposes.

COMMISSIONER DAFOE: Do you envisage the possibility of permanent conditional grants, or simply conditional



of permanent conditional grants, or simply conditional grants for temporary purposes.

HON. MR. JONES: That would depend upon conditions, I believe. I would regard the department, I propose, as a permanent organization, and if it became necessary from time to time to change these grants, to stop them, to lessen them or to enlarge them, it would be in a position to do so, and from time to time to recommend that it be done. Whether or not the grant would be permanent would depend upon conditions. In New Brunswick we might say we might be poor today and in a few years be much better off and would not need grants for any of these social services. That is possible. Ontario with its vast mining wealth may be rich today and poor tomorrow; so it would depend upon circumstances; It is a continuing operation right straight along. I apprehend a grants commission would have certain representations made to it by the provinces. Then, there is a hearing from time to time, and so on. But here there is a department and the provincial government is on the board, and these grants could be dealt with and the size of the grants determined from time to time. It could be a continuous process.

Take a disease such as tuberculosis, for instance. Doctors agree that if they have the money they can stamp it out. That statement has appeared in medical testimony. If the money was available tuberculosis could be stamped out. I cite that as an example of what could be done. Of course, when it is stamped out conditional grants-in-aid will not be needed in respect of that particular social service. As I said before, I cannot see any objection to that. Besides that, the suggested body could study transportation problems, which are a real grievance between the parties, and could make a recommendation as to that. In other words, it would be a joint organization representing all parties interested,



in constant session; and I cannot see why any province or the dominion would do anything to becloud an organization of that kind. As I say, they would be no longer at arms' length. Negotiation, compromise, is the modern system of settling difficulties.

The first part of page 9 simply shows that the question of the customs tariff was not considered by the White Commission. I have spoken of the effect of the tariff in the main brief, and this just adds a very few words to our brief in that respect.

In the last paragraph on page 9 we say:

" That there should be compensating adjustments with the provinces which have been adversely affected by the protective tariff policy of the Dominion Parliament may be regarded as fully admitted by the Government of Canada, in view of a pronouncement made by the Honourable Norman Rogers, Minister of Labour, in his place in the House of Commons, on February 7th, during the last session (1938 - Hansard) as follows:

'My views on the tariff can be expressed very simply. The tariff is an instrument of policy. If it is used at all other than for purposes of revenue in a federal state it should be used with due regard to its effect upon the maintenance of national unity. Where you have a situation such as exists in Australia and Canada, where secondary industries are largely concentrated in two provinces and where primary and export industries are largely concentrated in other provinces, you cannot move to extremes in tariff policy without endangering national unity and without undermining the very foundations of federal public finance. A high tariff policy will threaten national unity, and no one ought to know it better than the leader of the opposition.'





'But while we retain a tariff system I submit that we should keep constantly in mind that there are seven provinces in this Dominion whose income is supplied very largely, in some provinces almost exclusively, by primary and export industries, and we must be willing also to study the unequal incidents of the tariff and be prepared to apply such compensating adjustments as may be practicable. That is the position which I developed before the royal commission of economic enquiry in Nova Scotia.<sup>2</sup> That is the position which I hold today ..... '

The above remarks made by a Minister of the Crown during the Parliamentary Debates, not qualified in any way by the Prime Minister or any other member of the Government, must be considered as concluding this question, and it is therefore common ground as between the Dominion and this Province that there should be compensation provided in some reasonable manner for the loss sustained by New Brunswick in the past by reason of the operation of the protective tariff and that provision should be made whereby the province may be indemnified against any such loss in the future."

MR. STEWART: Mr. Jones, do you think that that concluding paragraph is what Mr. Rogers said or meant?

HON. MR. JONES: I think so.

MR. STEWART: I refer to the last paragraph in the quotation.

HON. MR. JONES: I ~~think~~ think so.

MR. STEWART: Or is not the language simply that the Dominion should be prepared to apply such compensating adjustments as may be practicable?

HON. MR. JONES: Yes.

MR. STEWART: He does not say anything about providing compensation to the provinces for loss sustained or indemnification against loss in the future.



HON. MR. JONES: What would be the difference, -- compensating adjustments?

MR. STEWART: Well, I should think, for instance, that the Maritime Freight Rate Act is a compensating adjustment.

HON. MR. JONES: Yes, that would be compensation also. I do not mean to go farther than that.

MR. STEWART: Any compensation which a Trade agreement gives in the way of better terms for the products of a province that is generally a primary producer.

HON. MR. JONES: They might fix the price of wheat or other farm commodities, potatoes, fish and coal in our province.

MR. STEWART: The coal subvention would be a very good example so far as Nova Scotia is concerned.

HON. MR. JONES: That is all I mean.

MR. STEWART: That is what you had in mind?

HON. MR. JONES: Yes; a compensating adjustment would be quite all right.

COMMISSIONER DAFOE: Not necessarily a compensation which would turn the application of the compensation over to the provincial government?

HON. MR. JONES: No.

COMMISSIONER DAFOE: Your view is not exclusive in that respect?

HON. MR. JONES: No. Perhaps my language is too strong; but the words that Mr. Rogers used seemed to be compensating adjustment of some kind. It is not that we would be paid a whole lot of money, but we want something to compensate us for the disadvantage.

COMMISSIONER DAFOE: The compensating may operate entirely along national lines and by national agencies?

HON. MR. JONES: Maybe. Yes, that is it. Distribute something over that will repay us for the losses that we have sustained now. Carry the freight for nothing from





Montreal to seaboard.

Now, I come to a question which I considered in the main brief, and I was going to ask the commission to let me present it in a little different manner, that is all. It takes but a few pages and will not take long to read. The statement is as follows:

"

THE FISHERIES

We desire to add on Page Sixty-nine of our main brief, after the statement respecting the Fisheries, the following observations.

Whatever doubt there may be as to the ownership by the Provinces of land and fish on the coast within the three mile limit, there can be no question as to the title of the provinces to the land up to the shoreline.

The case of the Attorney-General for Canada and the Attorney-General for British Columbia, Appeal Cases, 1930, P. 111 is interesting in this connection.

The head note is. "Section 7A and 18 of the Fisheries Act, 1913, of Canada, as amended, which provide that no one shall operate for commercial purposes a fish cannery, or in British Columbia a salmon cannery or curing establishment, without a license from the Minister of Marine and Fisheries, are ultra vires the Parliament of Canada. The sections purport to confer upon the Minister powers which fall under s. 92, head 13 (property and civil rights in the Provinces) of the B.N.A. Act, and are not directly or incidentally within s. 91, head 12 (sea coast and inland fisheries), or any other enumeration in s. 91. The fact that Canadian fishery legislation before 1867 had dealt with similar matters is not a ground for putting an unnatural construction upon the words of s. 91, head 12.



" The opinion was delivered by Lord Tomlin. At page 120 he said. 'The appellant contends in the first place that the subject 'sea coast and inland fisheries' covers such matters as the regulation of fish cannery or curing establishments, either ashore or afloat, and that the imposition of a licensing system upon such establishments is therefore justified.

The appellant, however, seeks for the word 'fisheries' in the latter Act (B.N.A.) a definition of such amplitude that it will include the operations carried out upon the fish when caught for the purpose of converting them into some form of marketable commodity. He supports his contention by referring to fishery legislation prior to 1867 affecting territories now part of the Dominion, pointing out that in this legislation there are to be found numerous provisions relating to the curing and marketing of fish, and he urges that the B.N.A. Act must be construed in the light of the earlier legislation, and that the word 'fisheries' must be given such a meaning as is wide enough to include at any rate the operations affected by the impugned sections.

Their Lordships are of opinion that the appellant's contention in this respect is not well founded. The fact that in earlier fishery legislation raising no question of legislative competence matters are dealt with not strictly within any ordinary definition of 'fishery' affords no ground for putting an unnatural construction upon the words 'sea coast and inland fisheries'. In their Lordships' judgment, trade processes by which fish when caught are converted into a commodity suitable to be placed upon the market cannot upon any reasonable principle of construction be brought within the scope of the subject expressed



by the words 'sea coast and inland fisheries'.

Page 122. "The impugned sections confer powers upon the Minister in relation to matters which in their lordships' judgment prima facie fall under the subject 'property and civil rights in the province', included in section 92."

They 'dealt with matters not within the legislative competence of the Dominion and cannot be supported'.

And in *Rex vs Somerville* (1927, 4 D. L. R. at 500) it is stated. 'Their Lordships have already noticed the distinction which must be borne in mind between rights of property and legislative jurisdiction. It was only the latter conferred under the heading 'Sea Coasts and Inland Fisheries' in section 91.'

A Brief was presented to the Arbitration Commission under the Treaty of Washington at Halifax on behalf of Great Britain. It is to be found in the record of the proceedings published in 1877 beginning at page 55 and entitled, 'Appendix A. Case of Her Majesty's Government.'

It is apprehended that it would be fair to quote from that Brief in order to indicate the attitude of Great Britain toward the several questions at that time."

Of course, it will be remembered that our theory is Great Britain got this money, which should have been paid to the provinces, instead of being paid to the Dominion.

Our brief continues.

"It was stated in the Brief (page 68 of the record):

'In the case of the remaining portions of the seaboard of Canada, the terms of the Convention of 1818 debarred United States citizens from landing at any part for the pursuit of operations connected with fishing. This privilege is essential to the successful prosecution of both the inshore and deep sea fisheries. By it they





would be enabled to prepare their fish in a superior manner in a salubrious climate as well as more expeditiously and they would be relieved of a serious embarrassment as regards the disposition of fish offals by curing on shore the fish which otherwise would have been dressed on board their vessels and the refuse thrown overboard.'

All the advantages above detailed have been secured for a period of twelve years to United States' fishermen. Without them fishing operations on many parts of the coast would be not only unremunerative but impossible, and they may, therefore, be fairly claimed as an important item in the valuation of the liberties granted to the United States under Article 18 of the Treaty of Washington'.

It was also stated in the brief at page 70 as follows:

'The privileges secured to United States' citizens under Article 18 of the Treaty of Washington, which have been above described particularly and in detail may be summarized as follows:

1. The liberty of fishing in all inshore waters of the Dominion, the value of which is shown by the kinds, quantity, and value of the fish annually taken by the United States' fishermen in those waters, as well as by the number of vessels, hands, and capital employed.
2. The liberty to land for the purpose of drying nets and curing fish, a privilege essential to the successful prosecution of fishing operations.
3. Access to the shores for purposes of bait, supply, etc., including the all-important advantage of transferring cargoes, which enables American fishermen to double their profits by securing two



or more full fares during one season.

4. Participation in the improvements resulting from the fisheries service maintained by the Government of the Dominion.'

By agreement the provision stated above in the third paragraph was eliminated from consideration.

By Article 18 of the Treaty of Washington it is provided that the United States fishermen have 'permission to land upon the said coasts and shores and islands and also upon the Magdalan Islands for the purpose of drying their nets and curing their fish. Provided that, in so doing, they do not interfere with the rights and private property or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose.'

It is clear that the Province of New Brunswick, by refusing to grant the privilege to the fishermen of the United States to land on the shores of the Province for the purpose of drying nets and curing fish would have been fully within its rights."

MR. STEWART: You claim that the province had the power to prevent the fishermen from landing on the shores of New Brunswick?

HON. MR. JONES: And drying their nets, yes. I also cite the authority.

MR. STEWART: On private property? I do not mean on Crown lands held in the right of the province. Do you mean that you could stop a fisherman from landing his catch on a wharf in Saint John harbour and sending it all over Canada if he wanted to?

HON. MR. JONES: Take the owner himself. Your question is, could not he sub-lease to somebody or grant a license to somebody to come on his own property and land the fish and cure it. I am not prepared at the moment to say why it should not be so, but I think that the province might. Of course, the





province could do it. The province can take away a man's property if it wishes to do it, without compensation. Whether he could land upon private property or not is a question that might be a little difficult to answer.

MR. STEWART: I am suggesting it might come very close to dealing in trade and commerce, not only interprovincially but from the international viewpoint of export and import.

HON. MR. JONES: Yes. It does not, though. I believe that the court will seek for the purpose of the Act, that is, whether it was really trade and commerce. It is not trade and commerce; it is a foreign fishing vessel landing upon property in the province for a certain purpose, a temporary purpose, to cure their fish in competition with people who are resident in the province. I believe the court would consider that to be a mere pretence. It would not be trade and commerce. However, there is that view.

COMMISSIONER DAFOE: Could the province of New Brunswick in the years from 1873 to 1885, by its own act, prevent the amplification of the Treaty of Washington.

HON. MR. JONES: I think so. I won't say that, Doctor.

COMMISSIONER DAFOE: Would not that be the effect of your contention?

HON. MR. JONES: No, I would not say that. Whether it had the right would be a matter of autonomy again. I do not believe it is necessary to say that. But what we do say is that the treaty-making power of Great Britain might well over-ride any authority that the province had. At any rate, it did.

COMMISSIONER DAFOE: Does it not implicitly say so in the British North America Act?

HON. MR. JONES: Yes, power to make a treaty.

COMMISSIONER DAFOE: How can you prevent the American fishermen from having these rights by action of the provincial authority?



HON. MR. JONES: That is not exactly what I intended to say. What I intended to say was, in the absence of that treaty New Brunswick could have done so. That is what I intended to say. I do not say New Brunswick could at that time prevent the making of that treaty, because it is an Imperial power. But I intended to say if it had not been for the treaty New Brunswick could have prevented it. Perhaps I do amplify it a little later on.

Our brief continues:

"And this right of refusal would apply with the same force as to British subjects residing outside of the Province. In the same way as, in the protection of our game, we treat the people of other provinces in respect to hunting licenses, the same as people from any foreign country. They are regarded as non-residents and they are only allowed to hunt upon the payment of some increased fees which apply to people from the United States.

Therefore, the province, without reference to the proprietary interest in fish was and is in a position to secure to the fishermen of the province practically the exclusive right to fish within the three mile limit for the reason that the right of fishing, without the privilege of landing and drying nets and curing fish would have been of very little, if any, value to the people of other provinces or to the fishermen of the United States.

If the law is as stated by the Judicial Committee in the cases cited, to the effect that there is no proprietary interest in the fish within the coastal waters of Canada, the Province, nevertheless, had rights which involved the whole question of fishing within the three mile limit and without the sacrifice of which the Treaty could not have been made."



MR. STEWART: Is there any evidence of any kind in the form of statements or in any form as to the use made by American fishermen during the periods 1873 to 1885 of the shore privileges?

HON. MR. JONES: I have not any statistics like that, but I presume they would be found in the proceedings of the arbitration.

MR. STEWART: The arbitration proceedings were held during the currency of the treaty?

HON. MR. JONES: Yes.

MR. STEWART: They would not have the full facts before them.

HON. MR. JONES: They would be only estimates.

MR. STEWART: They would be prophetic.

HON. MR. JONES: Yes. My idea in raising the question is to decide the principle whether New Brunswick should not have a part of the money. Then, as to what part would be upon the determination of what is fair and right. We claim, incidentally, in our main brief that New Brunswick has not been treated fairly in connection with the bonuses that have been given to fishermen. Our fishermen, unfortunately, do not come just within the benefits that are accorded to Nova Scotia. That is set out in our main brief.

MR. STEWART: Is your position this, that this commission should deal with the principle only as to whether the provinces should have been compensated? This commission has not before it the material on which to make a just distribution of the funds.

HON. MR. JONES: That is my idea. I believe this Commission would require more time than it would want to give to have an investigation made and have these figures prepared. But what we would like to have is the principle decided, and then by an agreeable committee or body the real figures could be determined. That is all. It would





require considerable study. A representative from the Dominion, Nova Scotia, New Brunswick, and Prince Edward Island, could get around the table and discuss the matter. It might even be an interprovincial board. However, I would not expect this commission to sit down and figure out in dollars and cents how the provinces should be treated.

The brief continues:

" It was stated in the brief as above quoted that the fishing would be not only unremunerative but impossible to the fishermen of the United States without the privilege of landing to dry their nets and cure their fish and this statement was not controverted by the United States. 'A privilege essential to the successful prosecution of fishing operations'.

Without this privilege of landing the United States' vessels would simply have one catch during the season and would then be under the necessity of returning home with their cargo, but with the privilege of drying their nets and curing their fish it would be practicable to have at least two cargoes during the season and probably three cargoes.

The Imperial Government by the terms of the Treaty took away from the Province the above mentioned right and all of the considerations involved in it and the effect was to destroy the privileges which the Provinces enjoyed from the fact of having its territory contiguous to the fishing grounds.

Irrespective of the proprietary right, the province, through its territorial rights, had practically the control of the fishing within the three miles of its coast line. Even if the United States had accepted the Treaty without the privilege of drying their nets or curing their fish, there would have resulted very little damage relatively to the fishing



by fishermen of the Province because the United States fishermen would not have been enabled to deplete the fishing grounds to an appreciable extent. Great Britain transferred rights to New Brunswick territory which were most valuable to the Province because these rights involved practically exclusive rights to fish on the coast and no compensation has been allowed to the province for these rights so granted by the Imperial Government to the United States."

MR. STEWART: Has there been any suggestion that the operation of this treaty did have the effect of depleting the fisheries on the coast?

HON. MR. JONES: Well, in depleting the fisheries on the coast I am not so sure. It certainly had the effect of destroying the trade of provincial fishermen to a very great extent, and it would be more likely to deplete the fisheries than if they had not the privilege to land and dry their fish. Whether it actually did or not I cannot for the moment answer. There would be the tendency, I suppose, too.

The brief continues:

" Irrespective of any proprietary interest in the fish it will be readily seen that the damage to the province and the fishermen of the province by the privileges granted on the shores were as great as if there was such proprietary interest.

How can it be said that the province should be required to bear the loss incidental to the taking away of some right to its own territory and not be compensated for such loss? This is especially true when the Imperial Government have been compensated for such loss.

If the Imperial Government had, through the Treaty, conferred upon the United States the privilege of





of coming into the province and cutting timber, and compensation had been made for the timber by payment to the Imperial Government, could it be argued that the Province of New Brunswick would have no redress, or not be entitled to the compensation so paid? The same principle applies whether it is the taking away of lumber from the province or taking away rights incidental to the province's proprietary title in those advantages which accrue to the ownership of the shore territory.

The question is referred to by Mr. Samuel Thompson, one of the British counsel, before the Halifax Commission at page 371 of the proceedings:

" Well, I should like to ask your Excellency and your Honours whether a gentleman who owned a farm would not find that its value materially diminished by someone else having a right of way over it. Could he sell it for the same price? He obviously could not. And why? Because the enjoyment of the privilege is destroyed to the extent that the easement gives the enjoyment of it to the person holding the right of way. The assertion that it makes no difference to a person possessing land that somebody else has the right to cut trees on it, I submit is perfectly absurd. It is just what the Americans have the right to do under the Treaty. They have not the right to come to our lands and cut trees, but they have the right to come into our territorial waters and take from them fish, which are just as valuable to the waters as trees are to the land. They have the right to take the fish, and for that, I apprehend, they must pay. If a man has the right to enter on my land to cut trees, I presume he must pay compensation for it; I presume he cannot get the right unless compensation is agreed upon. That is what we say. Taking fish from



our waters is precisely the same as taking trees off our land.'

In connection with the value of the concessions granted to the United States through the Treaty of Washington there appears in the British Reply to the Answer of the United States (see Journal page 134) the following statement by Mr. Secretary Seward:

' Will the Senate please to notice that the principal fisheries in the waters to which these limitations apply are the mackerel and the herring fisheries, and that these are what are called 'shoal fisheries', that is to say, the best fishing for mackerel and herring is within three miles of the shore. Therefore, by that renunciation, the United States renounced the best mackerel and herring fisheries. Senators, please to notice also, that the privilege of resort to the shore constantly to cure and dry fish, is very important. Fish can be cured sooner, and the sooner cured the better they are, and the better is the market price. This circumstance has given to the colonies a great advantage in this trade. That stimulated their desire to abridge the American fishing as much as possible; and indeed they seek naturally enough to procure our exclusion altogether from the fishing ground.'

And again:

' While that question is kept up, the American fisheries, which were once in a most prosperous condition, are comparatively stationary or declining although supported by large bounties. At the same time, the provincial fisheries are gaining in the quantity of fish exported to this country, and largely gaining in their exportations abroad. Our fishermen want all that our own construction of the convention



gives them, and want and must have more -- they want and must have the privilege of fishing within the three inhibited miles, and of curing fish on the shore.'

COMMISSIONER DAFOE: Mr. Jones, does your record show when that statement was made by Mr. Seward?

HON. MR. JONES: It was made.

COMMISSIONER DAFOE: Apparently made when he was a Senator?

HON. MR. JONES: Yes.

COMMISSIONER DAFOE: Not when he was Secretary of State?

HON. MR. JONES: Yes.

COMMISSIONER DAFOE: That is the point I have in mind, you see.

HON. MR. JONES: I did not bring a copy of the proceedings, which might explain that. It would have more importance as Secretary of State --

COMMISSIONER DAFOE: It would have more importance as Secretary of State than as Senator?

HON. MR. JONES: That is true.

COMMISSIONER DAFOE: We ought to have the exact authority. If you have it let us have it.

HON. MR. JONES: I shall do that. I do not believe there is anything here that explains what position he held at that time. He was evidently speaking in the Senate, anyway. The brief continues:

" 'Mr. Tuch of New Hampshire said:

' They (the Americans) want the shore fisheries, they want the right to erect and maintain structures on shore to cure codfish as soon as taken, thus saving cost, and making better fish for market; and believing their wishes to be easy of accomplishment, they will not consent to the endurance of former restrictions, the annoyances and trouble which they





have so long felt.'

" If we accept the statement of Mr. Secretary Seward endorsed by the British Reply that 'fish can be cured sooner and the sooner cured the better they are, and the better is the market price; this circumstance has given to the colonies a great advantage in this trade; that stimulated their desire to abridge the American fishing as much as possible and indeed they seek naturally enough to procure our exclusion altogether from the fishing grounds', what would have been the position of New Brunswick if a proposition had been made to it asking it to relinquish these advantages which geography had conferred upon it? Is it to be thought for a moment that this Province would have granted to the United States fishermen the privilege of landing, drying their nets, curing their fish, a privilege which would destroy 'the great advantage in this trade' which the province then possessed, and receiving no compensation for it? If the province had consented to grant such a privilege which probably it never would have done, it would no doubt have required that consideration should be made by a Commission for all the loss to be sustained by giving up this advantage. The Imperial Government gave up this advantage, through its Supreme authority to make treaties, and compensation is denied to the Province. The Imperial Government received pay for it, for the giving up of this right by the Province and yet the Province has received nothing."

I believe the opening words of this paragraph indicate that Mr. Seward was a Senator when he made the statement; but that he later became Secretary of State. I would not be sure of that, but that is the way it strikes me.

MR. STEWART: Mr. Jones, you are not suggesting that



the provincial government could have excluded the fishermen from landing fish; you are merely suggesting that the province had legislative authority to pass an Act to prohibit it.

HON. MR. JONES: That is right.

MR. STEWART: No executive authority.

HON. MR. JONES: No, not without legislation.

MR. STEWART: As a matter of fact, there was no legislation giving this privilege over to citizens of New Brunswick, was there?

HON. MR. JONES: Not that I know of, no.

MR. STEWART: Would not your case be stronger if the Imperial Treaty had actually over-ridden the existing statute of New Brunswick?

HON. MR. JONES: I do not know that it would be any stronger.

MR. STEWART: Well, it was obvious the right to protect the shore rights in connection with fisheries of the citizens of New Brunswick was a power which had never been exercised.

HON. MR. JONES: Well, we will say no. I have no record of it being exercised prior to 1873, but it may have been done prior to Confederation; but I cannot say. I do not imagine the occasion ever arose. By the Treaty of 1818 the Americans were excluded from that. However, I am not aware that there had been any legislation on the point. I cannot see myself where it would make any difference. If the right was there, why it was there.

Apparently the province was never asked to consent to the Treaty of Washington, while Prince Edward Island, and Newfoundland were required to pass legislation to give effect to the Treaty of Washington. These two colonies were required to pass that legislation simply because they had not come in; New Brunswick and Nova Scotia had come in.





Curiously enough both Great Britain and the United States required legislation along with Newfoundland and Prince Edward Island, in order to give effect to the Treaty of Washington. I am not sure whether there was any legislation in the Dominion or not; but they did not require legislation in New Brunswick and Nova Scotia.

COMMISSIONER DAFOE: Was not that significant as showing the status of New Brunswick and Nova Scotia had been merged in the larger status of Canada.

HON. MR. JONES: Yes, that is an element there. I am just stating what I have found to be the fact.

COMMISSIONER DAFOE: That was the reason why.

HON. MR. JONES: Presumably that is the reason why. That is to say, they had as great rights as they had prior to Confederation.

The brief continues:

" The Imperial Government did this without the consent of the Province of New Brunswick. It was not consulted when the Treaty of Washington was made. We think it safe to say that New Brunswick never would have consented to such a preposterous sacrifice. A sacrifice was made and the interests of New Brunswick suffered and the interests of our fishermen suffered severely simply because the Imperial Government wanted to use this concession for the purpose of reconciling the people of the United States in respect of claims and complaints arising through matters important to Great Britain and with which or in which the Province of New Brunswick had no concern. In short meter they used our rights for obtaining concessions in respect to Imperial matters.

Suppose there was a large deposit of mineral which the general public irrespective of what country they belong to, had a right to take away and convert



to their own use. But the people of this Province, by reason of some exclusive advantages they had through the ownership of surrounding property were in a position to mine the material much more advantageously than could the people of any other country. Would it be natural to suppose that the Province would confer upon some other people a share of these advantages without receiving any compensation therefor, so as to enable such other people to have more convenient access to the treasure and take away or divide the market to which and in which such treasure could be disposed of? That the province would never consent goes without question and if the Imperial Government with its supreme powers in reference to Treaty making, granted that concession over the head of the province, whereby the trade of the people of the province was destroyed or damaged, one would naturally expect that any remuneration received by the British Government would be handed over to the Province. The same principle applies here.

The amount of the Halifax award was paid for a loss sustained by reason of concessions made. This loss was all borne by the Maritime Provinces and Quebec and Newfoundland. There was no loss to the Dominion, not to the extent of a single dollar. The Dominion still retained its right to regulate the fishing. There was no loss to the western Provinces and there was certainly no loss to the government of Great Britain. The loss was more extensive than the valuation allowed. The concession not only permitted the depletion of the fish to a very great extent, but it took away the advantage which the provinces had of putting up the product of the fisheries for market much more cheaply than could be done in other fishing



communities.

The debates of Parliament in 1880 show that the Provinces of New Brunswick, Nova Scotia and Prince Edward Island were making and had made claims for their shares of the Halifax award. (Hansard 1880 pages 787 to 801). During the years 1903 to 1908, New Brunswick urged its claim to its proportional share of the award. New Brunswick, Quebec and Prince Edward Island submitted a proposed special case at that time, in order that the legal rights might be determined, but the then Minister of Justice would not agree. Repeatedly from 1912 to 1930 the claims of this Province were submitted to the Dominion Government.

We repeat paragraphs one to five inclusive as set out in our main Brief on pages 67 and 68, showing how unfairly New Brunswick has been dealt with in this connection, as compared with Nova Scotia, and that is all."

MR. STEWART: In what form were the submissions made to the Dominion Government? This claim was never put before a commission before, was it?

HON. MR. JONES: No.

MR. STEWART: Either the White or the Duncan Commission.

HON. MR. JONES: No. It was, in this way. It was in the form of a special case before the Exchequer Court between His Majesty in the right of the provinces of New Brunswick, Nova Scotia and Prince Edward Island and His Majesty in the right of the Dominion. Mr. Pugsley went on and recited the provisions of the treaty, Halifax Award and so on and so on. It was submitted to the Minister of Justice at the time --- I have forgotten who it was. It was concurred in you remember, by both parties in the local legislature, the Government and the Leader of the Opposition, Mr. Hazen who afterwards when to the Dominion Government, but the





Minister of Justice would not consent to there being a special case.

MR. STEWART: There has not been any representation since that time excepting perhaps the odd word in parliament.

HON. MR. JONES: Well, there may have been that, but no petition or anything serious like that. There is a statement that we make in our main brief. Mr. Baxter took it up when he was premier with the Dominion in 1930 or thereabouts; but it does not appear in just what formal way he took it up.

MR. STEWART: I recall the statement was made at Fredericton that the claim was dropped and forgotten for years simply because the province of New Brunswick was told it makes raids upon the Treasury.

HON. MR. JONES: Who said that?

MR. STEWART: That was your own statement.

HON. MR. JONES: Yes. Well, I daresay that was one reason why it was dropped. We got kind of ashamed.

COMMISSIONER DAFOE: You seem to have got your second wind.

HON. MR. JONES: Yes.

THE CHAIRMAN: You may resume at 2.30

(The Commission adjourned until  
2.30 P.M.)

(Page 10170 follows)



## AFTERNOON SESSION

The Commission resumed at 2.30 p.m.

HON. MR. JONES: Mr. Chairman, I was about to begin to read from page 22 respecting Part II of our main Brief:

"While we rely upon all of the statements made in the main Brief respecting the claims of the Provinces under this part, especially the pronouncements made by statesmen and the admission by Parliament in the Maritime Freight Rates Act, we supplement the Brief by adding the following.

Our claim under Part II irrespective of the question of a strict legal contract is that the provisions of the London Resolutions, paragraphs 65 and 66, should have been performed by the Dominion and that compensation should be in some reasonable way made to this Province by reason of their non-performance.

If all parties are disposed to treat the matter fairly as we must presume they are, it would seem only necessary to show that there was an undoubted understanding or design on the part of the provinces that there should be not only the construction of the Intercolonial Railway but that the improvements required for the development of the trade between the Great West and the Seaboard, a subject of the highest importance to the Confederation, should be prosecuted by the Dominion just so soon as the finances would permit.

This particular claim does not necessarily involve the question of autonomy or sovereignty or as to any amendment of the constitution. The matter is, therefore, reduced to a very simple proposition.

Was the understanding as above indicated?

In the Debates of 1865 Sir John Macdonald said





that he presented the scheme as a whole and that it must be adopted as settled between the different provinces. He was referring then to the Quebec resolutions.

The Legislature of Canada adopted the scheme as laid down in those Resolutions. In them (Resolution 69) there was the same provision as to the development of the trade as was contained afterwards in the London Resolutions.

Therefore, it is clearly shown that the provision about the development of the trade was in the minds of the interested parties not only at the Quebec Conference but at the London Conference as well. It was a provision that was never questioned even though some other features of the Quebec Resolutions were revised.

Thus it will be seen that this particular condition was always acceptable to the several provinces which arranged the Confederation.

It seems impossible to deny that it was thus understood and agreed that the Dominion would carry out the terms of that Resolution and, as soon as the finances permitted would be required to make improvements for the development of the trade. Any departure from that position must necessarily, therefore, involve a breach of a condition which in the minds of all formed an essential part of the whole scheme. The argument as to whether or not the provinces had a right to agree or that they had no treaty making powers, is not material in the consideration of the question we raise. As a matter of good faith the design as indicated should have been carried out.

The following quotation from the book of



"Trotter, Assistant Professor of History at the Stanford University, "Canadian Federation, its Origins and Achievements and Study of Nation Building", published in London and Toronto by J.N. Dent and Sons, Ltd. in 1924 at page 282, referring to the Great North West, has a bearing upon this question:

'The coalition's inclusion of Brown and McDougall with their long record as educators of the public concerning the North West, ensured, if such insurance were necessary, that the future of that great region already, as has been seen, a subject of serious study to the Canadian Government, should be taken into full account in the constitution-making task now facing the new administration. That such was the case is evidenced by the recognition accorded the problem in the resolutions of the Quebec conference. The tenth provided for the admission into the union of the Northwest Territories, British Columbia and Vancouver. Such provision, however, without adequate means of communication, would be vain. Accordingly the 69th recognised 'communications with the Northwestern Territory and the improvements required for the development of the trade of the Great West with the Seaboard -- as a subject of the highest importance to the federated provinces' to be prosecuted at the earliest possible period that the finances would permit.'

'One of the improvements contemplated among those required for the development of the western trade with the seaboard was a ship canal from Lake Ontario to the Georgian Bay via Lake Simcoe.'



"Professor Trotter considers that the provisions contained in the 69th paragraph of the Quebec Resolutions (being the same as 66 of the London Resolutions) were to be taken into consideration and that the development of the western trade with the seaboard was an eastern development. And again he says at page 283 as follows:

'Many upper Canadians who did not yet fully appreciate the possibilities of the British North West nevertheless felt that such works as this canal were of more importance to them than the Intercolonial railway. Therefore, if the latter was to be built by the new general government at the insistence of the lower provinces, they demanded that the improvement of western communications should also be undertaken by the same authority. Inclusion of both projects in the Quebec Resolutions was thus in a sense a means of reconciling 'diverse sectional interests'.'

"This is an authority indicating that the provisions in respect to the development of the trade were to be regarded as a part of the Confederation compact.

He also says at page 147:

'An insuperable obstacle to making the canals satisfactory as a sole means of long distance bulk transport in Canada was their unavailability for nearly half a year on account of ice. The States to the south were establishing transportation service by means of the railway available for internal traffic and for shipment to ocean ports at all seasons. It was obvious that if the Canadians wished to compete for the





trade of the west and to conduct their winter foreign trade without dependence upon those American routes they must provide Canada with railways of their own and see that these were extended to the ice-free ports of the maritime provinces.'

"Under the head of Canadian Federation, he says at page 115:

'It was further agreed that the central government should assume responsibility for the prompt construction of an intercolonial railway, an agreement that was a sine qua non to the entrance of the Maritime Provinces into a union. Communications with the North-West and the improvements that would develop western trade with the seaboard through Canada were declared to be subjects of the highest importance to the proposed federation, and they were accordingly to be undertaken as soon as finances would permit. The whole relation of these matters to the federation movement was of fundamental importance and is reserved for treatment at length in later chapters.',,

That indicates that he was adopting the London Resolutions as part of the scheme. Continuing:

"The Government of the Dominion recognizes the London Resolutions where, in its Brief presented to the White Commission on page eighty-two it states:

'The Fathers of Confederation, however, did not fall into any such trap and deliberately avoided any such proposition. Section 2 of the London Resolutions of 1866 reads as follows:

2. In the Confederation of the British



North American provinces the system of government best adapted under existing circumstances to protect the diversified interests of the several provinces and secure efficiency, harmony and permanency in the working of the Union is a General Government charged with matters of common interest to the whole country and Local Governments for each of the Canadas, and for the provinces of Nova Scotia and New Brunswick, charged with control of local matters in their respective sections, provision being made for the admission into Confederation on equitable terms of Newfoundland, Prince Edward Island, the Northwest Territory, and British Columbia."

I refer to that as showing that the government of the Dominion recognised that obligation. Continuing:

"and section 2 of the Quebec Resolutions is practically identical.

Also on page seventy-nine, where it is stated:

'The reasons given for this special allowance by the Quebec Resolutions (No. 65) and the London Resolutions (No. 63) were that the position of New Brunswick was 'such as to entail large immediate charges upon her local revenues'.'

Section 145 of the Act of British North America provides that:

'Inasmuch as the Provinces of Canada, Nova Scotia and New Brunswick have joined in a declaration that the construction of the Intercolonial Railway is essential to the consolidation of the union of British North America, and to the assent thereto of Nova





Scotia and New Brunswick, and have consequently agreed that provision should be made for its immediate construction by the government of Canada; Therefore, in order to give effect to that agreement, it shall be the duty of the Government and Parliament of Canada to provide for the commencement, within six months after the union, of a railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the construction thereof without intermission, and the completion thereof with all practicable speed.'

It will be noted that there was to be an inter-colonial railway; that is to say, a railway connecting the several colonies in British North America. It was not merely a railway between Halifax and the St. Lawrence River, but a railway extending from Halifax to the other Provinces. The agreement having been made between the Provinces, Parliament under this section gave effect to it by providing for the immediate construction of a part of the railway, and also declared it to be the duty of the Dominion to fulfil the terms of the agreement.

The question then arises, apart from any pronouncements made by statesmen at the time as to the flow of traffic and the development of Saint John as a national port, as set out particularly in the Brief, what does Resolution 66 actually mean?

Resolution 66 reads:

'The communications with the Northwestern Territory, and the improvements required for the development of the trade of the great west with the seaboard, are regarded by this Conference as subjects of the highest importance



to the Confederation, and shall be prosecuted at the earliest possible period that the state of the finances will permit.'

It was a subject of the highest importance to the Confederation. The development of the trade was the very object of Confederation. The construction of a railway would be practically of no advantage unless trade was developed over it.

The improvements required were for the development of the trade between the Great West and the Seaboard. It was suggested at the New Brunswick hearing by one of the Commission that perhaps the Seaboard meant Saint Lawrence ports. This could not possibly be so. 'Seaboard' means 'The line where land and sea meet. Seashore or the land near the sea.' This is from the Oxford dictionary. Under this definition the ports along the Saint Lawrence river could not possibly be regarded as the seaboard."

MR. STEWART: Would you contend that as to the whole length of the St. Lawrence?

HON. MR. JONES: Until you get to the seaboard.

MR. STEWART: Just where does the seaboard end?

HON. MR. JONES: At the mouth of the river, if you know where the mouth of the river is.

THE CHAIRMAN: Would Gaspé Basin be on the seaboard?

HON. MR. JONES: Possibly it would be. It would be a question of fact where the seaboard is. I do not think it could possibly be at Montreal.

COMMISSIONER DAFOE: Could it not conceivably be at Quebec?

HON. MR. JONES: I do not think so.

MR. STEWART: The waters of the river are tidal there, are they not?

HON. MR. JONES: Yes, I think so.



THE CHAIRMAN: Up to Three Rivers.

HON. MR. JONES: It does not say. The definition is "Seaboard" means "the line where land and sea meet".

Continuing with the brief:

"But we have Sir John A. Macdonald himself on record as to the meaning of the term. In his speech in 1865 during the Confederation Debates (see Kennedy's Statutes, Treaties and Documents of the Canadian Constitution, at page 552) he said:

'By a happy concurrence of events, the time came when that proposition could be made with a hope of success. By a fortunate coincidence a desire for union existed in the lower provinces and a feeling of the necessity of strengthening themselves by collecting together the scattered colonies on the seaboard had induced them to form a convention of their own for the purpose of effecting a union of the Maritime Provinces of Nova Scotia, New Brunswick and Prince Edward Island, the legislatures of those colonies having formally authorized their respective governments to send a delegation to Prince Edward Island for the purpose of attempting to form a union of some kind.

'We, ascertaining that they were about to take such a step, and knowing that if we allowed the occasion to pass, if they did indeed break up all their present political organizations and form a new one, it could not be expected that they would again readily destroy the new organization which they had formed -- the union of the three provinces on the seaboard -- and form another with Canada.'





That rather contradicts the idea that the provinces invited them to come down to Charlottetown. Continuing with the Brief:

' "Knowing this, we availed ourselves of the opportunity, and asked if they would receive a deputation from Canada, who would go to meet them at Charlottetown for the purpose of laying before them the advantages of a larger and more extensive union by the junction of all the provinces in one great government under our common sovereign. They at once gladly consented to receive and hear us."'

Then our Brief continues:

COMMISSIONER DAFOE: Do you think that is entirely conclusive? There never was any question that the three Maritime provinces were on the seaboard.

HON. MR. JONES: No.

COMMISSIONER DAFOE: But it does not necessarily mean that the term "seaboard" is limited to the Maritime provinces.

HON. MR. JONES: It may not strictly mean that, but the inference is very strong that it does.

COMMISSIONER DAFOE: I think it is perhaps open to question. They are on the seaboard, but one might say that Quebec is also on the seaboard.

HON. MR. JONES; It does not say that. It says, "by collecting together the scattered colonies on the seaboard." That would mean all the scattered colonies on the seaboard.

COMMISSIONER DAFOE: But not necessarily all the seaboard. That is the point.

HON. MR. JONES: The union of the three provinces on the seaboard. Where was the other province on the seaboard? It is not mentioned. It says, "the union of the three provinces on the seaboard." I think that is very strong. Continuing at page 28 of the Brief, and referring to Sir John A. Macdonald's statement:



"The above will indicate what Sir John Macdonald and the statesmen of the time regarded as the "seaboard" and it confirms our definition.

That there was a partial performance of this agreement and non-fulfilment of the terms thereof is set out in our Brief.

It was suggested by one of the Commission at the Fredericton hearing that Nova Scotia, New Brunswick and Prince Edward Island had requested the statesmen of Canada to attend at the Charlottetown Convention. The remarks of Sir John A. Macdonald quoted above are a sufficient answer to that suggestion."

MR. STEWART: I want to call your attention to a statement on page 111 of the New Brunswick submission which seems to indicate that you use the word "seaboard" in a sense other than simply the three Maritime provinces. On page 111, in the last paragraph you use this expression: "Here were provinces (referring to Canada) locked up for one-half the year without a seaboard, at the mercy of the United States for an outlet." That would indicate that when the St. Lawrence was open during the period of navigation, you regarded them as having a seaboard.

HON. MR. JONES: A very careless statement on my part.

MR. STEWART: Do you think there was anything further in the minds of the people of the province of Canada at the time than that they should have access to the sea without being required to go through American ports?

MR. JONES: That is one of the things without any question that they wanted.

MR. STEWART: And was not section 66 of the London Resolutions modified in expressing that? They were not using technical language, were they?

HON. MR. JONES: Well, they are supposed to be using that. That section was in the Quebec resolutions - practically the same thing.

MR. STEWART: If that was so, why was not the resolution





incorporated in some form into the British North America Act?

HON. MR. JONES: It is referred to in section 145. It provides for the construction of the Intercolonial railway.

MR. STEWART: That is section 65 of the London resolutions. But 66?

HON. MR. JONES: It was not incorporated because there could be no time fixed for it - only when finances would permit; a declaration that might well go into a contract, but would not be very suitable in a statute.

MR. STEWART: Might it not have been put in as an objective of Confederation which was binding as an ideal?

HON. MR. JONES: They did not put into the British North America Act everything that was in the resolutions.

MR. STEWART: For instance, section 94, which looks to the uniformity of laws, is not in any sense compulsory, is it? It could be followed if the province wished to.

HON. MR. JONES: That is true, but it is not like Resolution 66. There might be a distinction there. It is a provision which they may avail themselves of in case of necessity. It is difficult to explain why Resolution 66 is not in the Act in terms; but it is a part of the agreement when the joint resolutions were passed. That is referred to in the Act.

MR. STEWART: Is it not also true that the delegates remained in London and expressed their approval of the British North America Act as carrying out the London resolutions?

HON. MR. JONES: Substantially. They remained there and approved of the Act that was passed, the delegates from the provinces; but the Act did not necessarily contain all the terms of the agreement, and that is expressed in section 145 of the Act, which says that they joined in a declaration and consequently agreed. Now the only place they agreed was in those resolutions. That is the only place where they joined in a declaration and consequently agreed.

MR. STEWART: Is there any significance in the fact that they also unanimously resolved and agreed upon



this other, section 66, as well as on 65, the Intercolonial railway, and that that is omitted from the Act?

HON. MR. JONES: Yes, because they emphasize the fact that that whole thing was the only joint declaration -- all the resolutions -- you could not separate one from the other. They recognised the joint agreement and accepted the whole of it. That is the argument anyway. Continuing with the brief:

"There is an interesting statement made by Lord Sankey, L.C. in the opinion delivered by him in *Henrietta M. Edwards vs. The Attorney General of Canada* (1930 A. C. at page 135):

'Their Lordships now turn to the second point - namely (2) the internal evidence derived from the Act itself.

'Before discussing the various sections they think it necessary to refer to the circumstances which led up to the passing of the Act.

'The communities included within the Britannic system embrace countries and peoples in every stage of social, political and economic development and undergoing a continuous process of evolution. His Majesty the King in Council is the final court of appeal from all these communities, and this Board must take great care therefore, not to interpret legislation meant to apply to one community by a rigid adherence to the customs and traditions of another. Canada had its difficulties both at home and with the mother country, but soon discovered that union was strength. Delegates from the three maritime provinces met in Charlottetown on September 1, 1864 to discuss proposals for a maritime union. A delegation from the coalition government of that day proceeded to Charlottetown and placed



before the maritime delegates their scheme for a union embracing the Canadian provinces. As a result the Quebec conference assembled on October 10, continued in session till October 28, and framed a number of resolutions. These resolutions as revised by the delegates from the different Provinces in London in 1866 were based upon a consideration of the rights of others and expressed in a compromise which will remain a lasting monument to the political genius of Canadian statesmen. Upon those resolutions the British North America Act of 1867 was framed and passed by the Imperial legislature."

Whether they were invited to Charlottetown or came down off their own bat is unimportant, I think. They came down. Continuing:

"The question was also raised as to whether Nova Scotia and New Brunswick were new provinces created by the Act of British North America."

I might say that the preamble to the British North America Act states that the provinces of Canada, Nova Scotia and New Brunswick, had expressly desired to be federally united. Then it goes right on in the next paragraph to say that such a union would conduce to the welfare of the provinces and promote the interests of the British Empire. Now is it likely that the provinces would have expressly desired to be united if immediately they were going to be wiped out of existence? According to what some people contend, new provinces were created and the old ones wiped out of existence. But we must rely on the statement in the preamble that the provinces had expressed a certain desire conducive to the interests of the provinces. It must have been those provinces that expressed that desire. Now if they were going to be wiped out at





the very moment the Act was passed, how could that be conducive to the interest of the provinces?

MR. STEWART: There is no doubt that the Province of Canada was to be destroyed by the terms of the Act.

HON. MR. JONES: Not necessarily, but you could argue that it was according to the language of the Act. But you must consider the whole Act in a broad way. It was simply divided under two names, and all the institutions were preserved. You will notice by the Act itself that all the functions and authorities and powers that existed in the Province of Canada were preserved to the Provinces of Ontario and Quebec.

MR. STEWART: It is only in the sense that you use the word "Province" that there can be any question of description or any question of new province or old province arise. So far as territory is concerned, and so far as population is concerned, there is no difference before and after. But surely the government, the Province of Canada, was utterly destroyed when the new governments were established.

HON. MR. JONES: The Province of Canada was divided, and they provided the necessary machinery for the two new provinces.

MR. STEWART: But the province, in the sense that you used the word this morning, the government of the Province of Canada was utterly destroyed and two new governments were established in its place?

HON. MR. JONES: I would not say that. I would say that it was divided and the necessary provision made for separate jurisdictions, instead of having only the one. Continuing with the brief:

"In the Maritime Bank case this question is answered. (See Main Brief, page 87.)"



MR. STEWART: The question whether it was the same or a new province does not arise in that case.

HON. MR. JONES: I do not know that it does in that case. I am not sure that the whole question makes any real difference, but if you assume that these provinces were going to be destroyed, I would say that my view is that the object of Confederation was to conduce to the welfare of New Brunswick and Nova Scotia. Continuing with the brief:

"In the Fisheries case (1898), 1 A.C. 709, (an Ontario appeal), Lord Herschell, in delivering judgment said:

'There is no presumption that because legislative jurisdiction was vested in the Dominion Parliament, proprietary rights were transferred to it. The Dominion of Canada was called into existence by the British North America Act 1867. Whatever proprietary rights were at the time of the passing of the Act possessed by the provinces remained vested in them except such as are by any of its express enactments transferred to the Dominion of Canada.'

MR. STEWART: Lord Herschell's view in that quotation is not expressed in our own legal language.

HON. MR. JONES: You have to take it the way it reads.

MR. STEWART: But you have no doubt that Lord Herschell would not deny that it was His Majesty who held the proprietary right, in the right of the Province?

HON. MR. JONES: That is so, of course. Using the legal language he would say, His Majesty in the right of the Province.

MR. STEWART: Quite.

HON. MR. JONES: Continuing:





"This was the judgment of a very learned committee, consisting of the Lord Chancellor, Lord Herschell, Lord Watson, Lord Macnaghten, Lord Morris, Lord Shand, Lord Davey and Sir Henry De Villers.

"The rights were not said to be rights of new provinces then created but such rights 'remained vested' in the provinces."

All through the British North America Act, and you have to read the whole of the Act, you will find the expression that the provinces retained certain things. The whole meaning is that the Province retained all its property except what was conveyed to the Dominion, in the schedule enumerating the property that was passed over to the Dominion, and retained all its rights except those that were given to the Dominion. Continuing with the Brief:

"It has also been suggested that the provinces before Confederation had no power to make treaties. The provinces now have no power to make treaties as such but this does not prevent them from arranging by mutual legislation with other provinces in the Dominion and in making agreements with the Dominion.

"In the case of old age pensions, the whole scheme rests upon an agreement made between each province and the Dominion. This would not be called a treaty making power. Then, as stated in our Brief, the Act itself emphasizes the fact that the provinces had entered into an agreement which is sufficient authority to show that they were perfectly competent to make an agreement. These provinces were allowed the right to accept or refuse to join in the Confederation and to stipulate as to the terms which should be inserted or should be omitted from the scheme.

"If the colonies were not autonomous before



Confederation why was it necessary for the legislatures of Newfoundland and Prince Edward Island to approve of the Treaty of Washington in 1871 in order that it might be made effective?

"In Kennedy's Statutes, etc., Canadian Constitution, on page 539 there is set out an emphatic statement by Honourable Mr. Galt (1864) with reference to the fiscal autonomy of the then Province of Canada. It was induced by a complaint made by certain British interests as to the Canadian tariff against British goods and Professor Kennedy, in a note on page 539 of his book says:

'The vindication of Canada's fiscal autonomy was the outcome of correspondence with the colonial office over a protest presented to the Secretary of State by the Chamber of Commerce at Sheffield in relation to a Canadian act imposing protective duties on British goods. It finally closed remonstrances of such a nature. (Skelton, op. cit., pp 328 ff.)'"

That was intended to show that all parties had this understanding without reference to legal or definite agreement, and that it should be carried out. Continuing:

"Our position may be alternatively stated as follows:

"Brushing aside for the moment all pronouncements made by statesmen, let us consider the matter from the standpoint of the record.

"Section 145 of the British North America Act states that the provinces 'have joined in a declaration that the construction of the Intercolonial Railway is essential to the consolidation of the Union of British North America, and to the assent thereto of Nova Scotia and New Brunswick, and have



consequently agreed that provision should be made for its immediate construction by the Government of Canada'. Therefore, we must look for a joint declaration and for an agreement.

"The only joint declaration and the only agreement of which any record can be found is that contained in the London Resolutions.

"Number 65 of those Resolutions is in substantially the same terms as above quoted in section 145, - 'The construction of the Intercolonial Railway being essential to the consolidation of the union of British North America and to the assent of the Maritime Provinces thereto, it is agreed that provision be made for its immediate construction by the general government'.

"These Resolutions were a joint declaration by the three provinces and the only joint declaration which is to be found any place.

"It is an agreement such as is recited in section 145 and there cannot be any doubt but what it is a joint declaration and the agreement which is referred to in section 145.

"Some prominent writers in endeavouring to combat the compact theory of Confederation ignore the London Resolutions and begin with the fallacious assumption that those who contend that there was a compact rely upon the Quebec Resolutions. They then proceed to demolish that proposition."





by asserting that the Quebec Resolutions could not be regarded as a compact for the reason that they were not agreed to by the provinces. We agree that the Quebec Resolutions cannot be regarded as a compact but our case is based upon the London Resolutions which, we say, constitute a compact and that such compact was made by the authority of the several provinces through their delegations to the London Conference as we particularly set out in our Brief.

"The letter from Sir John A. Macdonald to the Colonial Secretary at the London Conference states that the London Resolutions were arrived at by the unanimous vote of the provinces. The quotation is as follows:

'I am happy to inform you that the delegates who have sat steadily from the 4th to the 24th instant have arrived at a satisfactory conclusion and have adopted by the unanimous vote of the provinces, a series of resolutions which I shall transmit to-morrow morning to your lordship at the Colonial Office.'

"Section 145 states as a fact that the provinces 'have joined in a declaration' and 'have consequently agreed', thus establishing beyond question the following:

- (a) That the provinces had power;
- (b) That an agreement was actually made;
- (c) That the London Resolutions contained the agreement and
- (d) That the delegates to London had power to agree on behalf of the provinces.

"And the Privy Council decides that there was a contract, therefore, it is immaterial whether any declaration or pronouncements were or were not made.

" The Canada Railway Loan Act of 1867, Imperial,



which was passed after the British North America Act, has the same recitals and therefore contains another confirmation that the provinces had joined in a declaration and had agreed.

"The Dominion parliament also reiterated the statement in the Act respecting the construction of the Intercolonial Railway passed in December 1867, 'Whereas the provinces of Canada, Nova Scotia and New Brunswick joined in a declaration that the construction of the Intercolonial Railway is essential to the consolidation of the union of British North America and to the assent thereto of Nova Scotia and New Brunswick, and consequently agreed.'

"Therefore, we have the direct statement of fact in two Imperial Statutes that the provinces had agreed and we also have the legislative admission by the Parliament of Canada that the provinces had agreed.

"From the above it would appear to be conclusive that there was an agreement by the provinces and that it was contained in the London Resolutions.

"If the agreement was so contained then all the provisions of the London Resolutions must be regarded as a part of the agreement.

"Therefore, Resolution 66 which provides that the improvements which are required for the development of the trade between the Great West and the Seaboard 'shall be prosecuted at the earliest possible period that the state of the finances will permit', is a part of the contract.

"It will appear from the above that the provinces desired to have the Dominion created in order that it might be an instrument for carrying out certain functions for the provinces.





"But can the Dominion be deemed to have undertaken the responsibilities mentioned in the agreement?

"The provinces had arranged with the Imperial Government that there should be a guarantee by that Government of three million pounds sterling which was to be applied to the construction of the railway and they had received a pledge to that effect. Resolution 65 proceeds, - 'and that the Imperial guarantee of three million pounds sterling pledged for this work be applied thereto so soon as the necessary authority has been obtained from the Imperial Parliament.'

"Section 145 of the British North America Act mentions no pledge or no guarantee. There is simply a bald statement that 'it shall be the duty of the Government and Parliament of Canada to provide for the commencement within six months after the union of a railway connection the River St. Lawrence with the City of Halifax in Nova Scotia and for the construction thereof without intermission and completion thereof with all practicable speed.'

"The only duty cast upon the Dominion, without reference to the agreement, was to construct the railway. The Dominion had the right apart from the agreement, to finance a railway without availing itself of the guarantee. There might be other means which may be reasonably conceived of whereby the Dominion, through some company or through some capitalists would be able to undertake and carry through this work without accepting the assistance which had been arranged by the provinces. Therefore the Dominion, apart from the agreement, must be regarded as a free agent after it was created with respect to the means by which the railway was to be constructed.



"The Dominion, being thus a free agent so far as legislation is concerned chose to accept the arrangement which had been provided by the provinces under their agreement. By the Canadian Act respecting the construction of the Intercolonial Railway in December, 1867, (Chapter 18) it is stated:

'And whereas, the Imperial Act known as the Canada Railway Loan Act authorized the guarantee by the Imperial Government of the interest on a loan to be raised by Canada towards the construction of the Intercolonial Railway---on certain conditions therein mentioned. Therefore, in fulfilment of the duty imposed on the Government and Parliament of Canada as aforesaid, and in order to the raising of the said loan, so to be guaranteed as aforesaid, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:'

"The guarantee was provided for by the Canada Railway Loan Act passed in February, 1867, after the British North America was passed, whereby the Government of Great Britain was authorized to make the guarantee, but nowhere in the last mentioned Act or in any other Act was it provided that the Dominion must accept the guarantee. Therefore, the Dominion exercised its free choice to accept the guarantee which was provided for by the agreement between the provinces.

"Having so accepted the provision made by the provinces as to the pledge and guarantee, the Dominion was bound to fulfill the terms of the contract made between the provinces. The Dominion could not avail itself of one provision of the contract without being bound by the other provisions. It could not accept the benefits of the contract without abiding by its other terms, and



without being responsible to fulfill the agreement as a whole."

MR. STEWART: There you are putting it on the ground of strict contract.

HON. MR. JONES: Yes.

MR. STEWART: With adequate consideration

HON. MR. JONES: Yes.

MR. STEWART: Where is the evidence that the provinces had any proprietary right in the guarantee of the British government, and that they had the right to assign it?

HON. MR. JONES: The provinces had this right. I am going to deal with that point later on.

MR. STEWART: Very well; I will not press the question at this stage.

HON. MR. JONES: I can deal with it better when I come to it. The alternative statement which I make is more in the nature of a contract; the other one which I made previously was simply that there was an understanding that should be carried out. This is setting up something more in the nature of a contract.

"The same principle applies as would have been invoked if the provinces, instead of having received the pledge and having arranged for the guarantee with the Imperial Government, had agreed to pay over to the Dominion three million pounds sterling to be applied toward the construction of the railway. It could not be argued that in this latter event the Dominion could take the three million pounds sterling from the provinces without being bound to the disadvantages if any, entailed by a performance of the whole contract.

"The acceptance of this guarantee by the Dominion was an acceptance of the agency and, therefore, the provinces could hold the Dominion to the performance of the





of the conditions of the contract contained in the London Resolutions. A person cannot accept a benefit or take money from another without being responsible for the terms upon which the money or benefit is granted.

"Thus the Dominion is directly connected with the Confederation contract and it became its duty to apply the guarantee towards the construction of the railway and to make the improvements required for the development of the trade between the Great West and the Seaboard."

MR. STEWART: Is there anything in the Canada Railway Loan Act of 1867 to show that it was a transfer of a right by the provinces to the Dominion, that Britain should guarantee -

HON. MR. JONES: Are you referring to the Imperial Act or the other one?

MR. STEWART: The Imperial Act. Was there anything in that act to indicate that the British parliament was accepting notice of a transfer of the provincial rights to the Dominion, implementing a pre-existing promise by means of this legislation.

HON. MR. JONES: I do not know that there was definitely anything in that act to that effect, but the fact was that there was this pledge, which could be attributable only to resolution number 66. That is the only place where a pledge or guarantee is mentioned, and the Canada Railway Loan Act implemented that pledge.

MR. STEWART: The construction that you suggest is therefore that the three provinces said to the Imperial government, "You may carry out your pledge to us by giving a guarantee to the Dominion."



HON. MR. JONES: Yes.

MR. STEWART: And on the strength of that the Dominion, although not then in existence, because it subsequently built a railway as required by section 145 of the British North America Act and accepted a guarantee from the Imperial parliament must be deemed to be bound to the provinces by this understanding, as a matter of strict contract.

HON. MR. JONES: The Dominion was not in existence when the agreement was made, but it came into being subsequently and took advantage of a loan or of credit, or a pledge or guarantee which had been arranged by the provinces and in which the provinces were interested, because ultimately the provinces had to stand back of it.

MR. STEWART: By passing resolutions and having the British North America Act enacted, did not the provinces put themselves in a position where they could not take advantage of the British pledge to guarantee railway bonds.

HON. MR. JONES: I do not think so, because Lord Carnarvon, in introducing the bill, said that he would be merely obliged to ask parliament for a grant of three million pounds under this pledge.

MR. STEWART: Provided the Dominion came into being.

HON. MR. JONES: Yes. So that he recognized that the Dominion government was bound by this pledge.

MR. STEWART: It was this construction on which the idea of an ordinary contract was founded.

HON. MR. JONES: In a court that would be quite a question, but in a tribunal of this kind where it is not set up as a purely legal matter it would be strong evidence that there was something of the kind.

MR. STEWART: Is there anything to suggest that if Confederation had not gone through the three million pounds would have been put at the disposal of the three provinces





to build a railway?

HON. MR. JONES: If they wanted it, yes. I refer to that later on.

"But what evidence have we that the provinces did have a pledge from the Imperial Government as to the guarantee? We have already indicated how closely the recitals in the Imperial and Dominion Railway Acts have followed the words of Resolution 65. The fact that the agreement was made and contained in these London Resolutions without any qualification, would be prima facie evidence that the statements made in the Resolutions were true and that there was actually a pledge for a guarantee.

"The following extracts from Professor Trotter's book have a bearing upon this question. At page 154 he says:

"'Howe, aiming principally at securing aid for the railway to connect his province with the American routes, but not unmindful of the desirability of a line to Canada as well, accordingly went to England to urge the matter upon the attention of the authorities there. So far successful was he that Earl Gray agreed in March 1851 that the British Government would guarantee the interest on the required loans on the stipulation that the line to Canada be built wholly through British Territory.'

"At page 155:

"'Hincks sailed on the 4th of March 1852, and Chandler a fortnight later but after they had waited six weeks they received word from Howe that he would not be able to join them at all. They accordingly had to pursue the negotiations without him. The new Derby government with Sir John Pakington at the Colonial



Office decided that while they would fulfil the pledge of the previous administration and guarantee loans to build a railway on the line recommended by Major Robinson, they were unwilling to approve of the proposed transfer of the route to the Saint John Valley.'

"At page 184:

"'Accordingly he (the Colonial Secretary 1861) advised that a responsible body be formed with whom he could communicate and that more definite proposals be submitted showing the extent to which the provinces would bind themselves to give financial support to the undertaking. The important part of Watkin's mission across the Atlantic in 1861 was to secure the requisite action by the provincial governments that would hasten the completion of this railway link between the existing Grand Trunk system and the ports of the Maritime provinces.'"

MR. STEWART: Is it not a fact that New Brunswick refused to make any financial commitment unless the road went up the Saint John valley?

HON. MR. JONES: I have not yet come to that. At page 207 we find the following:

"In the same winter of 1863-1864, Watkins, now president of the Grand Trunk, acting on behalf of members of the governments of Nova Scotia and New Brunswick, secured the consent of the Colonial Office and the Treasury to a proposal that if those provinces would go ahead at their own expense with the construction of a railway along the approved line for the one hundred odd miles from Truro to the "Bend" of the Petitcodiac where it would connect with the Saint John-Shediac line, the works constructed thereupon should be



considered to form part of the railway on which the loan of £3,000,000 was to be expended, if that loan should eventually be raised under the Imperial guarantee."

I wish to show that the idea of a guarantee extended over the years, and it was a well-understood thing that the provinces would have it if they constructed a road.

"The colonial office agreed, but stated, however, that though the Imperial Government considered its offer of a guarantee to be still in force, it would certainly cease to do so unless a definite arrangement were made and the necessary colonial laws passed within five years of the date of the first memorandum, i. e. before December, 1867.'

"At page 213:

"Having once formally accepted the Quebec Resolutions Canada was committed to the completion of the railway in the event of federation actually being brought about.'"

That is a pretty strong statement, but of course it is only the personal opinion of Professor Trotter. At page 215:

"The British Government had already offered to guarantee the credit of the Provinces severally for the undertaking, a more risky commitment, and the cabinet of Lord Derby were not unwilling to make good the promise of their predecessors in office.'

"At page 217:

"The Canadian Parliament complied with the conditions by passing the Intercolonial Railway Act, the amount authorized to be raised solely on Canadian credit being £1,000,000.'

"There is also a statement made in the House of Commons by the Right Honourable Charles Adderley,





the Under Secretary for the Colonies, who had charge of the Bill for the Confederation of the provinces in the House of Commons reported in Hansard 1867, 3rd series, CLXXXV, at page 1168. Mr. Adderley was explaining the Bill which afterwards became the Act of British North America. He said:

"There is, I believe, only one other clause to which I need now allude, and that is a clause by which these provinces bind themselves immediately to proceed to the construction of a great international railway, which they regard as the back bone of the general scheme of union. There is nothing in this Bill which implicates this House or this country in that undertaking; but it is only right, I should add that the adoption of that provision will render it necessary for me to ask the House to guarantee the interest of a loan by means of which the railway is to be constructed.'

"It would be difficult to find language to indicate more clearly that there had been a pledge given by the Imperial Government.

"This statement by a member of the Government having charge of the Bill in Parliament and made at such a time must be accepted as the fact. It would render it necessary to ask for the guarantee. It would not be necessary unless there had been some agreement or understanding about it. The provinces were willing to agree that the railway be constructed, provided they could be assured of some assistance which would make it possible to construct it."

COMMISSIONER DAFOE: May I direct your attention to the following paragraph in the statement quoted above:



"There is nothing in this bill which implicates this house or this country in that undertaking."

Might not that be interpreted as saying that there is no obligation on the part of the Imperial government until something happens? He goes on to say:

"But it is only right, I should add, that the adoption of that provision will render it necessary for me to ask the house to guarantee the interest of a loan by means of which the railway is to be constructed."

The provision here referred to is the provision that would involve the passing of the British North America Act. Could not that statement be interpreted as meaning that if the British North America Act did not materialize, no obligation rested upon the British government.

HON. MR. JONES: If it did not go through?

COMMISSIONER DAFOE: He says: "There is nothing in this bill which implicates this house or this country in that undertaking; but it is only right that I should add...." and so on. I think that might be argued to mean that if the British North America Act did not go through the pledge would lapse.

HON. MR. JONES: It might be so argued, I suppose.

COMMISSIONER DAFOE: It seems to me it rather suggests that that was the understanding. That statement by Adderley rather supports that view. Certain things being done, an obligation is imposed on the British government. The thing that had to be done was the passing of the British North America Act, bringing Confederation into being, and then whatever guarantee there was was contingent upon the Confederation of the provinces.

HON. MR. JONES: Very well; we will assume that to be correct for the moment. The pledge was there, the guarantee





was there. It was open to the Dominion when created to accept or refuse that guarantee and if they accepted it Great Britain was bound to furnish it. That is all that we want for our case. That is the view I take. To continue:

"Mr. Aytoun, a member of the Imperial Parliament, in the same debate at page 1180 is reported to have said:

"That clause provided that it should be the duty of the Canadian and other local parliaments to construct a railway from Halifax to Quebec; and if the House assented to that provision they would be bound in honour to give the Imperial guarantee to the loan which was to be raised, for the purpose, upon the promise of which it was that the delegates from the Colonies had undertaken the construction of this line.'

"The house would be in honour bound to give the guarantee and it was upon this promise that the provinces had undertaken to build the line.

"The fact that in February, following the passage of the British North America Act, the Imperial Parliament did authorize the guarantee, after reciting that the provinces had agreed etc. is conclusive evidence of the fact that such a pledge was given to the provinces.

"The pledge could not have been given to the Dominion because the Dominion had not been created when the pledge was made. It was given to the provinces, which, after all, were the real parties interested.

"That the Dominion partially performed the contract from the beginning is indicated by the fact that the schedule of freight rates on the Intercolonial Railway was not based upon commercial considerations but must necessarily have been attributable to the contract.



The rates were lower up to 1912 than the normal freight rates on railways in Canada. (See report of Duncan Commission).

"The partial performance of the contract is also evidenced by legislation of the Dominion parliament from time to time and the gestures made toward the implementation of the terms of the agreement as particularly set out in our Brief on pages 107 to 111 and all of these legislative acts and gestures can only be attributable to the contract.

"The construction of the National Transcontinental Railway with grades designed for the carriage by rail of the grain crop to the Atlantic ports is further evidence that such an agreement was made. It is common ground that the east bound traffic could be carried over that railway on a down hill grade all the way to the Atlantic ports. The failure of parliament to compel the traffic to follow that route, regardless of the act of the shipper, is a matter wherein the agreement was not carried out. This point was apparently applicable to all the legislation in that regard."

MR. STEWART: Just at that point, you are relying upon an implication, which you draw from clause 66 of the London Resolutions, that trade and commerce was to be compelled to follow the route from the west through maritime ports. Do I understand that to be your contention?

HON. MR. JONES: Yes. Whatever improvements were necessary for the development of that trade must be provided.

MR. STEWART: But all that the particular resolution says is that communication with the Northwestern Territories and the improvements required for the development of the trade of the great West with the seaboard are regarded by the conference as a subject of the highest importance to the



Confederation. Now, has not the Dominion provided or caused to be provided full canal communication and two lines of railways from the great West to the seaboard?

HON. MR. JONES: But how can trade be developed if you dump it off on the seashore? There were no harbour facilities provided for fifty years after confederation.

MR. STEWART: There were railway lines provided within the fifty years.

HON. MR. JONES: Even so, there was not a full compliance with the undertaking.

MR. STEWART: Was there not rail communication from the West straight through to Saint John and Halifax by the year 1885?

HON. MR. JONES: Yes. The Canadian Pacific Railway went straight through to Halifax, yes.

MR. STEWART: And to Saint John.

HON. MR. JONES: What I complain of is that there were not sufficient harbour improvements to take care of trade. You cannot develop trade simply by means of a bare railway. As a matter of fact to-day there is no accommodation in the harbour of Saint John such as there should be.

MR. STEWART: Is there more traffic offering than can be handled?

HON. MR. JONES: There would be if the facilities were greater.

MR. STEWART: That is not true at Halifax.

HON. MR. JONES: We would have to have the freight rates adjusted.

MR. STEWART: But there is nothing in section 66 about the cost of carrying freights over those lines of communication, and about improvements - not a word about that.

HON. MR. JONES: Not exactly, but there is this to be considered, that the improvements necessary for the develop-





ment of trade involve the provision of harbour facilities, shipping facilities, to carry the export traffic outside of the country; and, if necessary, freight rates must be such as to promote the development of trade.

MR. STEWART: Can you show me where the implication is substantiated that freight rates should be so reduced as to compel traffic to follow the route to the maritime ports? It certainly is not in section 66 of the resolutions.

HON. MR. JONES: Not in terms.

MR. STEWART: Do you think it is there by implication?

HON. MR. JONES: It is there of course, under the head of improvements.

MR. STEWART: Yes; but are not improvements simply railways and canals and port facilities?

HON. MR. JONES: I am glad you include port facilities, because that is certainly of importance. As to railway rates, the fact that the Intercolonial was operated for years, up to 1912, along those lines, would indicate that an attempt was made to carry out some agreement of that kind. Just at the moment, however, I do not recall where there is any distinct provision with regard to freight rates. There is simply the question of communication with the Northwest. Outside of that resolution, we do not know at present of any direct provision with respect to freight rates.

MR. STEWART: I will assume that section 66 had been put into the British North America Act as one of the ideals of Confederation, and I will ask you whether the Dominion of Canada has not progressively been taking steps, from the earliest time, to bring about a realization of that ideal, first, by the construction of the Intercolonial Railway, connecting with the Grand Trunk, and then by assistance to the Canadian Pacific Railway, and then by the development of a canal system and by the development of port facilities at



the Atlantic ports. Is not that the case? Have they not been progressively attaining that ideal?

HON. MR. JONES: I would say not. They have not completed it as far as they should have gone now, and for a good many years after Confederation there was no development of port facilities. Saint John, it is true, got busy and itself created some facilities, but they are entirely inadequate to deal with the export or the import trade of Canada even in the winter season. Now, it is true, they are probably doing better; but our complaint is that, as compared with the vast sums of money spent on harbours in the United States and on railways, and on the Saint Lawrence, we have not had relatively that degree of improvement which we had a right to expect under that resolution.

MR. STEWART: I wish to call your attention to the fact that on page 24 of the Brief you quote with approval Professor Trotter's statement as follows:

"One of the improvements contemplated among those required for the development of the western trade with the seaboard was a ship canal from Lake Ontario to the Georgian bay via Lake Simcoe."

So that the canal system that was built was surely in implementation of this ideal expressed by the three provinces in the London declaration

HON. MR. JONES: Yes, so far as was necessary. They had to provide improvements to get the trade of the west to the seaboard, and if it was necessary to provide improvements by means of a canal system that had to be done.

MR. STEWART: My last question is this: Do you not think that the situation can be fairly stated in this way - that the representatives of Canada, the province of Canada, compelled during the winter months to ship their goods through American ports, requested the declaration that an alternative





route should be opened and made available whereby they could get their foreign trade, their exports, out of Canada without the necessity of going over American routes or through American ports?

HON. MR. JONES: They may have had that in their minds, but they never indicated it in any pronouncements that were made.

MR. STEWART: Again, I would refer you to Professor Trotter. On page 24 you quote him as follows:

"Many Upper Canadians who did not yet fully appreciate the possibilities of the British Northwest nevertheless felt that such works as this canal were of more importance to them than the Intercolonial Railway. Therefore, if the latter was to be built by the new general government at the insistence of the lower provinces, they demanded that the improvement of western communications should also be undertaken by the same authority. Inclusion of both projects in the Quebec resolutions was thus in a sense a means of reconciling 'divers sectional interests'."

The people in the maritimes were to get the Intercolonial and they were to get access to foreign markets through Canadian ports.

HON. MR. JONES: That may be so to a certain extent; we do not doubt that that is his opinion. But what I quoted him for particularly was that he recognized the Quebec and London resolutions as forming an integral part of the Confederation set-up.

MR. STEWART: Do you think that any father of Confederation, anyone present at the London conference, regarded section 66 as a declaration inserted for the maritimes or one inserted for Canada?

HON. MR. JONES: I have no reason to know that except



from the declarations that I have spoken of. If they had something else in their minds, I cannot judge what it was. But they never diverged from the general statement, in all their declarations about the maritime provinces - the continuous flow of traffic, and so on.

COMMISSIONER DAFOE: There is one quotation from Professor Trotter to which I would like to refer you. Professor Trotter is now the head of the history department at Queens. The reference to him here might suggest that he was still connected with an American university, but the fact is that he is head of the history department at Queens. The quotation to which I refer, from page 283, is given on page 24 of your brief. It stresses the fact that the proposal to open up the Northwest was a different proposal from the one to build the Intercolonial Railway. That suggests, what is known to be the fact, that this was an Upper Canada project. This demand for the opening up of the west and for improvements represented the campaign which had been carried on for so long by Mr. Brown and his associates for the extension of roads into the Northwest. It was not in its origin a maritime movement; and, as far as I know, the contemporary literature on the subject suggests that it was exclusively or almost exclusively an Upper Canadian interest. If that is so, the linking together of it and the Intercolonial on page 26 could not perhaps be justified by the record. On page 26 of the brief this statement occurs:

"It will be noted that there was to be an Intercolonial Railway, that is to say, a railway connecting the several colonies in British North America. It was not merely a railway between Halifax and the Saint Lawrence River, but a railway extending from Halifax to the other provinces."

That unites them in a single proposition. Professor Trotter



says that they are divergent projects, representing diverse sectional interests, which I think has some bearing on the question we are discussing.

HON. MR. JONES: I can follow that. Does he say "diverse sectional interests"?

COMMISSIONER DAFOE: Yes; he refers to the inclusion of both projects in the Quebec resolutions as being in a sense a means of reconciling diverse sectional interests. In the course of the Confederation debates pressure was brought to bear upon Mr. Brown by the Upper Canadian representatives to give a pledge that the building of the road into the west would proceed *pari passu* with the building of the Intercolonial Railway, but he would not go beyond saying that they had this in mind and would prosecute it as rapidly as possible. I am suggesting that perhaps it has not been completely established that this was an integral part of the maritime case at Quebec or at Saint John, and that undue stress may be laid upon it as constituting the claim such as you are presenting on behalf of the maritime provinces. Historically it has a different origin and objective.

HON. MR. JONES: Suppose it were a fact that historically it emanated from interests there. The Intercolonial Railway was the *sine quanon* so far as our provinces were concerned, and that was probably the main complaint of the maritime provinces. But probably the provinces regarded this development of the canal system as part of the whole scheme. But the whole development of the trade, under 66 would inure to the benefit of any persons likely to be advantaged by the development of this trade, irrespective of whether it was considered divergent or otherwise in those early days. That is the point I wish to make here.





the Intercolonial Railway was one that the lower provinces insisted more particularly upon; but if you deem the resolution to be the same as if it were in the Act then all the country which would naturally participate in the development of the trade between the Northwest and the seaboard should take advantage of it, and should have the right to take advantage of that provision.

On page 41 we refer to what Sir Edward Beatty says as a railway authority, and we quote it for what bearing it may possibly have, the same way as other opinions are given by so-called experts, or people who are interested or who are authorities. Our brief reads as follows:

" THE INTERCOLONIAL RAILWAY

The evidence given by Sir Edward Beatty, President of the Canadian Pacific Railway Company, before the special committee of the Senate appointed to inquire and report into the best means of relieving this Confederation from its extremely serious railway condition and financial burden, is interesting in this connection. He said (page 567):

'There are railways in this Canada that are purely national, not commercial. I am referring to the Intercolonial. The Intercolonial is not changed in its status in this arrangement that we suggest. But there is a very common feeling throughout the country that the Intercolonial, as a national work, was constructed for a specific purpose and should not be considered a commercial undertaking. I should not have any objection to the Intercolonial being excluded from this thing and being run by the Government as they saw fit, in the national interest. There seems to be some implication that those who contend for that theory are not entirely wrong historically ..



' By Right Honourable Mr. Meighen: Q. In view of the explicit policy embodied in the Maritime Freight Rates Act, you are not suggesting that the Inter-colonial be severed from the other railways and be run as a government railway?

Mr. Beatty: No, I am not suggesting it. I am just saying that there is some support for the theory. It is the property of the Government, and the Government are the only people who can determine the policy.

Mr. Meighen: That applies to all the National railways?

Mr. Beatty: Not quite to the same extent. Those other railways were built for commercial purposes, and gratuitously or otherwise fell into the hands of the Government.'

The question as to what was required in respect to the development of the trade is our next consideration.

In the first place there was no question that the finances would have permitted these improvements to have been made fifty years ago. This is indicated by the vast amount of moneys expended upon other Dominion services.

That the Atlantic seaboard was the seaboard indicated is beyond question because there was no other seaboard even thought of at that time.

There can be no question but that there was no adequate attempt made by the Dominion to make such improvements as would be required for the development of this trade.

The non-fulfilment of this contract was of very great damage to the Province of New Brunswick.

In view of the above is it not clear that the





Dominion should consider itself to be in the position which in a business corporation, would be that of an agent, who had been created for the purpose of performing certain services for the parties to the incorporation and that the agent had accepted the agency with all its responsibility, by reason of having received the benefits held out to it by the interested parties? And also that it is the duty of the Dominion to make fair compensation to the Province by reason of the non-fulfilment of such duties?"

MR. STEWART: Do you suggest, by the last paragraph on page 41, that the building of communications from the Canadian West, the Great West, so called, to the British Columbia ports was a violation of the Confederation pact?

HON. MR. JONES: Not if they had been properly built to develop the trade in an easterly direction from the west, but not having done that ---

MR. STEWART: And that the port development at Vancouver was a breach of the Confederation pact?

HON. MR. JONES: I do not call it a breach of the Confederation pact. What I say is there should have been the improvements required for the developing of trade between the Great West and the seaboard, meaning an eastern development. If that had been done they could do as they liked in the West.

MR. STEWART: Or that the terminals at Hudson Bay amounted to a diversion of trade from the great channels.

HON. MR. JONES: I would say so, yes.

MR. STEWART: You would.

HON. MR. JONES: That is a version.

MR. STEWART: Was it not contemplated at Confederation that British Columbia should be a part of the Dominion?

HON. MR. JONES: Oh, there was a provision made whereby it might come in, yes.



MR. STEWART: Don't you think the British Columbia seaboard was equally entitled to port development with the east?

MR. JONES: Yes, but the resolution did not say so. "Through Canada with the seaboard communication with the Great West." Surely that cannot mean the Pacific because it was not thought of at that time.

MR. STEWART: Might it be that was the reason why the Imperial parliament would not put it into the British North American Act, because they felt it would be very unfair to British Columbia and to any future provinces that were created out of the Western lands?

HON. MR. JONES: It is pretty hard to determine that. It is difficult to determine what was in their minds at that time, except the written word. They could hardly have contemplated any trade with British Columbia ports, because that did not develop until the Panama canal was constructed. There was no possibility of trade there with Europe except through the Panama canal. They could not have had that in their minds.

MR. STEWART: There is no restriction in section 66 that it must be trade with Europe. Trade to the Orient was equally in contemplation, was it not.

HON. MR. JONES: It might be to the Orient, but it was rather far-fetched at that time. The idea was to develop the Northwest.

Page 43 is headed "Pronouncements" and reads as follows:

" It was suggested by a member of the Commission on the hearing that the Quebec Resolutions having been rejected by Nova Scotia and New Brunswick, any pronouncements made prior to that time could not be considered as inducing the people of those seaboard provinces to enter into the union.

Surely it cannot be argued that the pronouncements



could not be used as indicating what was in the minds of all the parties, particularly with reference to this question of the development of the trade and the use of the seaboard. All the pronouncements were matters of public record and no person can say how much reliance was placed in them by the people of the seaboard provinces.

While our case does not depend upon pronouncements, they may be regarded as indicating the general design or scheme of Confederation and we cannot escape from the construction which is properly to be placed upon the Resolution 66 as to the development of the trade when we consider all those pronouncements referring to the building up of the ports and the continuous flow of traffic to those ports.

But we refer to one pronouncement made by the Honourable Mr. Cartier at Montreal on the 29th of October, 1866, after the Quebec Resolutions were rejected by the seaboard provinces as follows:

'I must repeat to you what I stated while in the lower provinces that while we possessed the personal and territorial elements which go to constitute a nation, we were wanting in the Maritime element. During six months of the year we had to knock at the door of our neighbor in order to carry on our trade. This cannot be tolerated. This confederation must be carried out. I know that every citizen of Montreal will understand that at this critical time we should look to Nova Scotia, to New Brunswick and to Prince Edward Island for elements wanting in Canada to make a great nation.' (Journals of Assembly, New Brunswick, 1872, at page 12 of the Better Terms Report).

In conclusion it may be well to state that we





take very strenuous exception to the position often taken by writers whose vision is limited to the boundaries of Ontario and Quebec to the effect that the original intention of the British North America Act has been considerably altered by judicial decisions.

What we say is that the intention of the Act has been emphasized by judicial decisions. It seems to us that the judicial committee of the Privy Council is best qualified to construe legislation. It is composed of men very high in the legal profession who have devoted their lives to the practice of the law and we regard it as most presumptuous for any person to arrogate to himself the right to say that the Privy Council has altered the original intention of the Act of Confederation.

It is a cheap way of answering an argument when there is no logical answer to be made.

The following extracts from the Fortnightly Law Journal, the leading Canadian law publication, are interesting in this connection:

In the issue of March 1st, 1938, headed "The Parliamentary Attack on the Privy Council" there is the following:

' The other disruptive sign in our estimation has been the vitriolic attack by a so-called constitutional expert in the House of Commons at Ottawa, on the institution of appeals to the foot of the throne. We are not inclined to regard this matter too seriously either because after all the federal jurisdiction over civil questions even involving points of constitutional law, is so doubtful that it is difficult to see how the federal parliament can hope to exercise any real degree of control. But, as we have said before, the really serious matter is



the dangerous publicity which is given in attacks like these to quack theories to which the public is inclined to lend an ever attentive ear. The impression that is always intended to be conveyed is that political considerations enter into every decision of the Privy Council on constitutional points, and particularly that the rights of the provinces have been expanded at the expense of the strength of the federal government in order to maintain the colonial status of Canada. The proposition thus stated shorn of the sugar coating of specious argument with which the political spell binder clouds the issue, is so absurd as not to merit serious consideration. But unfortunately the public have not the necessary acumen to penetrate the mass of verbiage and uncover the fallacy upon which it is based.

#### DAMAGING PUBLICITY FOR FALLACIOUS ARGUMENT

Of course the politician knows that in the House of Commons or on the political rostra of this country the Privy Council is fair game for attack and is completely vulnerable. Being a Court it has to permit such attacks to go unanswered. Wherefore one cannot regard such attacks as possessing any degree of sportsmanship, even if they were founded upon any just basis. When therefore we find them founded on utterly fallacious opinions advanced for mere political advantage, one cannot too roundly condemn them. In the particular instance it suffices to point out that they emanate from a member of the government that fared so ill with its New Deal legislation, to demonstrate the political axe that is thereby being ground. What the proponents of that legislation will not admit is that that legislation was founded upon a misconception of two Privy Council decisions that they thought indicated





a political trend in the Judicial Committee of which they sought to advantage themselves. The fact that that political trend existed only in their own imaginations ought to answer completely the charge of political bias in the Privy Council. Instead the disillusioned politician uses it as a specious argument to bolster new charges of political bias.' And in the issue of December 15th., 1937:

THE NEW DEAL LEGISLATION DECISIONS

In this issue there appears the first part of an article on the results of the New Deal legislation judgments of the Privy Council written by a distinguished New Brunswick counsel and subscriber. This article to an extent affords an answer to the 'Symposium' in the Canadian Bar Review. As will appear in the later parts of the article the writer concludes that as a result of the decisions it would appear necessary to amend the British North America Act. This does not coincide with our opinion previously and frequently expressed. But the article does demonstrate that the decisions which have been so bitterly criticized are the only possible result that could have been reached. The question of amendment of the B.N.A. Act is of course simply a matter of opinion. In our opinion the first major amendment that transfers a vital legislative power from one legislative sphere to another, will mark the entering wedge in the final disruption of Confederation. The inevitable result of one such amendment is another and another, until either the federal authority is emasculated, or the provincial legislatures become mere glorified municipal councils. Either way the whole carefully built structure of a federal system that has functioned with marvelously little hitch



for over seventy years - functioned far more smoothly than even its most enthusiastic proponents ever hoped - will collapse like a house of cards, leaving only an endless bickering, harbinger of ultimate disruption.'

THE INTERESTS OF THE BRITISH EMPIRE.

In the preamble to the Act of British North America it is declared that the 'union would conduce to the welfare of the provinces and promote the interests of the British Empire'.

We have already dealt with the first of these great objects of Confederation, namely, the welfare of the provinces as provinces, without reference to the number of people in a province and we now desire to make some observations in respect to the other object of the union.

The interests of the British Empire could be promoted only by an adherence to the terms of the interprovincial agreement whereby, in effect, it was provided that whatever improvements were necessary to develop the trade between the Great West and the British seaboard and the establishment of a trade route on British territory to promote British trade through British channels, operating continuously throughout the year, would be provided by the Dominion.

The development of Canadian trade through United States channels, hereinbefore particularly referred to, is a breach of trust toward the province, a breach of faith with the United Kingdom and constitutes a danger to the safety of the Empire.

The Duncan Commission drew attention to this danger resulting from the lack of development of port facilities on the seaboard referring to the incidents of the late war and recommended, amongst other things, the construction of additional port facilities at Saint



John.

Parliament recognized the danger and provided money for the construction of such additional port facilities and declared that further grants would be made for that purpose.

In the meantime, a large portion of the port facilities at Saint John was destroyed and these facilities have been replaced only partially.

At present Canada has not sufficient seaboard port facilities and improvements on British territory to provide for all of its own overseas Atlantic traffic. If the Empire had been forced into war as a result of the recent European trouble, the United Kingdom would have been in a position, respecting food supplies from Canada, even worse than that existing before the United States entered the Great War.

Even if there were no inter-provincial agreement requiring the Government and Parliament of Canada to provide improvements for the development of trade with the British seaboard, the appalling danger to the Empire from the lack of such improvements should be sufficient to awaken the Government and Parliament of Canada to the necessity of making immediate provision for such improvements.

The Right Honourable Colonel Amery, when Secretary of State for the Dominions, publicly advised Canada to correct this condition and the Right Honourable Mr. Baldwin, when Prime Minister of the United Kingdom, speaking in Saint John, in effect, advised this Province to endeavour to have the conditions corrected.

We may assume that Mr. Chamberlain was aware of the danger when he conferred with Mr. Hitler.

#### CONCLUSION

In our submissions we have endeavoured to explain





what we conceive to be the meaning of this Confederation, and to make some suggestions which, it is hoped, may assist the Board in recommending a satisfactory plan whereby the Union may be preserved.

There must be a spirit of harmony between the provinces and this can only be encouraged, in our judgment, by a close and careful study by all the parties interested of the documents and records pertaining to the compact, that is to say, the proceedings at London and the legislation mentioned in our Briefs.

We feel convinced that a proper appreciation of the whole question will lead to a uniform understanding on the part of the provinces and the Dominion and that then the duties and obligations will be willingly performed, the difficulties now existing swept away and Canada will be on a fair road to nationhood."

COMMISSIONER MACKAY: I should like to ask one question, Mr. Jones. Assuming for purposes of argument that your contention that the ports of the Maritimes have not been properly developed, and that railway facilities have not been developed to the extent desirable, is it reasonably certain that if they had been developed or were developed that they would get the trade, that trade would flow through these ports if they had much better facilities than they have now.

HON. MR. JONES: The trade probably would. My view is that trade would, under the full meaning of the Confederation pact, and that trade should have been encouraged to flow that way.

COMMISSIONER MACKAY: Do you mean forced?

HON. MR. JONES: Forced in a way, yes, away from the United States and into Canada. We can never grow up by the sending of our products down through the United States. We can never be a nation that way.



COMMISSIONER MACKAY: Then, your contention is, it is not only the providing of the facilities, but actually the using of the machinery -- parliament, if you want to go that far -- to prohibit trade going through the United States to the seaboard.

HON. MR. JONES: Well, curtailing it to some extent; curtailing the investments of Canada in the United States. "Where your treasure is there shall your heart be also." There are enormous expenditures made by Canada in the United States since Confederation. They were not \$300,000 000 then.

COMMISSIONER MACKAY: As a matter of fact was there any investment in the United States until the 1920's after the C.N.R. took over the Grand Trunk.

HON. MR. JONES: I have not the figures.

COMMISSIONER MACKAY: My opinion is there was not.

HON. MR. JONES: I do not know. Perhaps not very extensively. But in answer to the question I would say that the means required for development of trade presuppose not only two railway rails but the development of port facilities, and the encouragement of trade through British channels.

Now, that may<sup>not</sup> be in the resolution; but who can read the history of the British North America Act, and the comments that were made leading up to the whole situation unless they are convinced that the whole scheme was the development of a great nation here as a part of the British Empire and the development of channels of British trade through.<sup>British Channels.</sup> It was never contemplated that after seventy years we would contribute to the United States exports and imports. Look at the country and consider its history. Look at the country and consider its history. Where were the people to build it up. The only way to build it up even now is to do away with the transportation to the United States, and force if you like, the traffic through British





channels so we will be able to supply the British Empire with food in case of war. We cannot begin to do that now with the facilities we have at hand. We could not do it through the port of Saint John if we depended upon the C.P.R., because it runs through the state of Maine. If there was a war and the United States was neutral they would shut us off.

COMMISSIONER MACKAY: Foodstuffs went through there during the Great War. The troops did not go through, but foodstuffs went through on the C.P.R.

HON. MR. JONES: Yes, that was done by a neutral country, you see.

MR. STEWART: Munitions and contraband could not go through.

HON. MR. JONES: But at the same time the United States can shut us off. You are dependent upon the United States to furnish food to the Empire over the C.P.R. But, I say, speaking broadly without reference to those little subtleties and all those little questions that we have been considering, when you look at the whole scheme even now the provinces and the Dominion should get together and devise some means of developing this Canada. Whether it is a country or not it is a union of separate entities. Call it what you like. It should be developed for itself and be self-supporting in the provisions for its export and import trade.

If you carry goods below cost across the country, think of the labour it is going to make for the people of the Dominion. The Dominion is now fixing the price of wheat. Suppose the Dominion does lose something by developing the ports of Saint John, Halifax and other ports, think of the railway men ~~it~~ will employ and the vast traffic that would accrue to Canada., These millions ought to be spent in Canada. If that were done we would have the making of a nation.



If this policy is continued New Brunswick will be no better off in fifty years than it is now; in fact it will be worse than it is now. Nova Scotia and Prince Edward Island will be the same. I do not know so much about the western provinces. Any traffic that goes to the United States must be brought back into Canadian trade channels and the means required for the development of that trade between the Northwest and the seaboard must be such means as will bring that trade back.

Some reference was made this morning to the preferential tariff. That has helped. That shows what can be done. We have railways. The transcontinental grade was designed to carry this trade. Let us keep it within Canada even at a sacrifice. When it gets started it will be alright. The sacrifice will be only at the moment.

COMMISSIONER DAFOE: Mr. Jones, I should like to touch on one point, and to have your views, if you care to give them. As I listened to your very interesting presentation this morning you left the impression that in your opinion it was universally accepted at the time of Confederation that the Federation was of the character you outlined; and that that was so universally accepted that none of the ordinary precautions of the ordinary provisions that go with a classic proposition or exhibition of Confederation were taken, such as having the states that are federated the constituents of the joint governments, so that it is responsible to them and could be held to account. I got the impression that your opinion was universal trust because everybody understood that was the kind of government we were to have. Now, I am puzzled to know, how, if that was so general, there were so many statements to the contrary. I could mention a great many. I could mention the despatches of Lord Mullin, the private letter to Lord Carter, and some of the Confederation debates, but I am going to read one and



have you make your comment as to how it could possibly have been made if that impression was general. I should be obliged to have your opinion. These are very interesting questions, we both agree.

In moving the adoption of the resolution in the Canadian Parliament, Sir John A. Macdonald said: "We thereby strengthen the central parliament and make the confederation one people and one government, instead of five peoples and five governments with merely a point of authority connecting us to a limited and insufficient extent."

How could he have possibly said that if the impression was general. I am not saying that your judgment is not right; I would have no business to say that. How could Sir John A. Macdonald get an idea like that if the impression was general that it was a Confederation of the classic type.

HON. MR. JONES: He was speaking to his own constituency, parliament, was not he?

COMMISSIONER DAFOE: Yes, he was doing that.

HON. MR. JONES: We cannot be responsible for politicians speaking to their own constituents. I have not, Doctor, at the moment any authority on that. What I tried to argue was that the act bears that impression upon its face; that the provinces trusted in the integrity of the Dominion Parliament, otherwise they would have taken the ordinary provisions to check these things.

COMMISSIONER MACKAY: If they were creating a Confederation, as I say, a classic case of confederation, they would have taken all the provisions which adhere historically to Confederation; as an instance, the Confederation of the United States people lasted seven years, in which the states nominated the delegates to the central government, and could withdraw them. That was the principle behind the





states general of Holland. That principle survives very largely in Switzerland; but in Canada we created a parliament not responsible at all to the provinces; bound according to your theory to serve their welfare, not in terms of the judgment of the judiciary, but in terms of the judgment of the capitals, and yet not responsible to the provinces, not amenable to control by them, not liable to censure, not liable to ejection from office, but absolutely free to go their own way, and listen with the indifference which has been suggested today to protests from these provinces who are supposed to be the dominant factors. That policy applied not only in the Semmons but in the Senate which was supposed to have been created for the purpose of protecting the provinces. According to your theory the provinces were pretty dumb at the time.

HON. MR. JONES: Yes, that expresses it exactly. They were dumb and being dumb they feel that they should emphasize whatever comfort or whatever advantage they can spell out of this legislation. Therefore we say the Dominion took advantage of the dumbness of the provinces, and have gone one disregarding the facts for which Confederation was consummated.

MR. STEWART: Because they were dumb for seventy years is no reason why they should be dumb for seventy-two?

HON. MR. JONES: No.

THE CHAIRMAN: Does this complete the case for New Brunswick?

HON. MR. JONES: Yes, Mr. Chairman.

MR. STEWART: This brief will be filed as exhibit

413.

EXHIBIT NO. 413: Supplementary Brief  
of the Province of  
New Brunswick.



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Rome 1938

ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

OTTAWA, NOVEMBER 25, 1938

REPORT OF PROCEEDINGS

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Official Reporters:

H. Oliver  
T. S. Hubbard







ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

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LIST OF WITNESSES:

Senator Hon. J.W. deB. Farris Counsel for British Columbia	10238-10272
W.E. Massey, Esq. Provincial Auditor, Prince Edward Island	10272-10275

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OTTAWA, ONTARIO, NOVEMBER 25, 1938

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## ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

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 OTTAWA, ONTARIO, NOVEMBER 25, 1938
 

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The Royal Commission appointed to re-examine the economic and financial basis of Confederation and the distribution of legislative powers in the light of the economic and social developments of the last seventy years, met at the Railway Committee Room, House of Commons, Ottawa, on Friday, November 25, 1938, at 10.30 a.m.

PRESENT:

DR. JOSEPH SIROIS ..... CHAIRMAN

JOHN W. DAFOE, Esq.	)	
DR. ROBERT ALEXANDER MacKAY	)	Commissioners
PROFESSOR HENRY FORBES ANGUS	)	

Commission Counsel:

James McGregor Stewart, K. C.

Secretariat:

Alex. Skelton, Esq.	Secretary
Adjutor Savard, Esq.	Secrétaire Français
R.M. Fowler, Esq.	Legal Secretary
Wilfrid Eggleston, Esq.	Assistant to the Secretary

FOR THE GOVERNMENT OF BRITISH COLUMBIA:

Senator Hon. W.J.deB. Farris	Counsel
G. Neil Perry	Director of Bureau of Economics and Statistics

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Railway Committee Room,  
House of Commons,  
Ottawa, Ont.,  
November 25, 1938.

MORNING SESSION

The Commission met at 10.30 a.m.

THE CHAIRMAN: We are very happy, Mr. Farris, to see you here again on behalf of British Columbia. Have you any statements or briefs to file with us now?

MR. J.W. deB. FARRIS, K.C.: Mr. Chairman, I want to make a short statement at this time, but first I should like to add to what has already been said here an expression of my very deep personal regret at the unfortunate retirement of Chief Justice Rowell. It is a regret first for the reason of his retirement, that his health has broken down, and his retirement is a great loss both to this Commission and to the country, -- his retirement from active life both as Chairman of this Commission and as Chief Justice of Ontario. I should like to say with some feeling that I have always had a great admiration for Chief Justice Rowell, for the remarkable combination of fine qualities which he has shown throughout his life, and I am sure that we all wish him better health and a measure of enjoyment of life in his retired position.

To you, sir, I would hesitate to extend congratulations because I know that you regret most exceedingly the cause that puts you where you are; but I should like to express my appreciation of and confidence in your ability to fulfil the duties of your very difficult position and to wish you every success in the position you now occupy.

In regard to a further statement on behalf of the Province of British Columbia, I have been asked if we have a further brief. I have no further brief to submit



this morning although there are some figures which I am going to give you in the way of a summary.

I have with me Mr. Perry, who succeeds Dr. Crothers as the director of our bureau of economics in the province, and we shall file with the Commission a few documents of a supplementary nature. I really have not a great deal to say at this time. I think I am down here more to keep in touch with what is going on, and I would like the Commission to feel, particularly as some of the provinces, unfortunately, have not given this Commission the support that I think they should have done, that so far as British Columbia is concerned we are anxious in the fullest measure at all times to give the closest cooperation and assist in any way we can, and to express our confidence in the work you are doing.

When we met the Commission in Victoria, your Chairman, Chief Justice Rowell at that time, intimated that he would like to have a few more definite figures on what he termed our particular claim in regard to grants for British Columbia as compared to the other provinces. I have with me the brief of argument which I submitted at that time, and the Chief Justice pointed in particular to headings (2) and (3) of the summary which I have given of these things, and which appears at the top of page 6 of my Brief of Argument. I had better give you the context, Mr. Chairman:

"It is submitted that the financial set-up now and heretofore existing between the Dominion and British Columbia has not made adequate provision for the cost of government in the Province, has drained her resources, impeded her industries, and is unfair for the following reasons:

"One: The grant allowances are inadequate for and entirely out of proportion to the increasing





cost of provincial government.

Two: The allowances have been made without due consideration of the physical features of the Province, which make the cost of government exceptionally high.

"Three: In comparison with other provinces of Canada, equitable treatment has not been received by British Columbia in the matter of Federal subsidies and allowances."

I propose to supplement these statements with some figures that are more of a summary of what has been said than anything new; and these figures are given to the Commission as merely approximate and to indicate in a general way what our claim is in this particular.

In presenting the figures, Mr. Chairman, emphasis is given to the fact that our territory and more fundamental matters mentioned in the Brief impose disadvantages under which British Columbia has suffered. These more fundamental matters are of much greater magnitude but are not capable of being easily reduced to definite figures. These matters are already set forth in our Brief, and I shall refer to them in closing very briefly. But for the moment I refer to the subjects under Divisions Two and Three of the Brief which I have just set out.

First as to the physical features. I have already indicated to Mr. Skelton on the long distance phone that we have found it not practicable to make a comparison in figures in that connection.

Rigorous proof that the physical features of the Province of British Columbia have made the administration of this Province more costly than that of the other provinces has never been found to be capable of reduction to definite figures. It seems almost





impossible to prepare a comprehensive statistical proof at the present time. The fundamental difficulty is that comparative statistics are not available. In the absence of this information the only alternative would appear to be a descriptive proof showing just how the physical features of the Province tend to make the cost of government relatively high. We have already in our Main Brief given you an indication of that.

There are four geographical considerations which affect the administration of an area:

- (1) The extent or size of the area.
- (2) The character of the surface.
- (3) The location of resources.
- (4) The presence of water systems, etc.

The size of the area is admittedly an important influence in the case of government, since the larger the area the greater the necessity for decentralization. Branch offices must be established both for supervision and convenience of control. British Columbia, in land area, is the third in size of all the Canadian Provinces, superseded only by Quebec and Ontario.

I or Mr. Perry will file with you a table which you may find of interest, and which makes a comparison not only of the actual size but in the percentage of the total amount occupied. I think there are some tables already filed with you in this connection. We will file an additional table.

You will notice from these tables that there is this characteristic of British Columbia, that the population is spread over a great many different territories. Not only is the area large, but the sparse population is not confined, as in some of the other provinces, to definite portions of the province. It is very extensive in the area that has to be looked after in



connection with the people who are settled in these different areas.

The character of the surface determines not only where settlement shall take place, but it may or may not place very difficult problems before the government. The presence of a rugged and mountainous terrain such as covers a large portion of the Province of British Columbia obviously makes the construction of the road-bed a costly and difficult matter. Unfortunately it is not possible to produce adequate statistics to prove that road construction is more costly in British Columbia than elsewhere, since there are many complexities involved. For example, roads in the Prairie Provinces can be relatively straight, and the inter-connecting road system can be reduced to its shortest length, but in British Columbia it is not always expedient to surmount a mountainous area by straight roads, and more often long, winding roads must be constructed, and consequently they are more expensive to build. Comparing road costs on the mileage basis does not reveal a situation of this kind, and this demonstrates the kind of complexity which pervades the whole question of a statistical proof.

The location of the natural resources naturally influences the distribution of the population within the Province, and consequently the more scattered the resources the more scattered the population, involving long connecting roads and other governmental services. The location of the inhabitants, in turn, has an immediate effect on the cost of Government, and it is certainly well known that in British Columbia the population is sparsely settled, so that an expensive system of government overhead must be maintained.





The presence of inland water systems can offer important advantages to a province. Cheap transportation is one of the most important benefits. British Columbia has not been noticeably endowed with large navigable rivers, and of course we have not had the benefit of a canal system such as some of the other provinces have had, and the Province of British Columbia has had no alternative to an overland transportation system.

That is about all I can add to the matter that was submitted comprehensively to you before. I recall that at that time I pointed out that almost/<sup>without</sup>exception since Confederation British Columbia has had to budget for deficits, and I know the suggestion was jokingly made that we were an extravagant people. But after all we are no different from the rest. Most of us have come to British Columbia from eastern Canada or from Scotland, where people are not supposed to be unduly extravagant. So I do not think that that criticism is the real explanation. I think the real explanation is the physical conditions of the Province, conditions which add to the cost of government there, and I think this must be taken into consideration.

Now to reduce that to dollars and cents, Mr. Perry and I have racked our brains how to do it, and the only suggestion I can make is that we take some arbitrary figure and add it to the 80 cents, which was an arbitrary allowance that was fixed; and I think that if 5 cents is added to that as a very minimum it would be a modest item. That additional 5 cents per capita it is suggested might be claimed to compensate the province for that condition which we know exists in British Columbia, and any person who goes there must know it. It has been asserted so long and so often that it has pretty nearly to be accepted by this time, because if you repeat a thing often enough and long enough it is bound to be accepted sooner or later. I feel





that we are in a position to establish it by reason of the respectability of the age for which that contention has been made, if for no other reason.

We have suggested, therefore, and again it is purely artificial, as many of these things must be, an additional 5 cents because of these considerations.

The next question that comes up is the question of debt allowances as at Confederation, and again I refer to my Brief of Argument, at page 11. You will recall, sir, that when the representatives of British Columbia came to Ottawa in 1871 they asked for a debt allowance and a per capita allowance based on an assumed population of 120,000. The actual population of British Columbia at that time was less than 40,000, and the reason why this was asked is set out in that Brief at page 11. To refresh our memories may I read one paragraph:

"As stated above, the salient reason for assuming a population of 120,000 (approximately three times the actual number) was the fact that, on a per capita basis, the Customs and Excise revenue which was being surrendered to the Dominion amounted to \$8.25 in British Columbia, as against a per capita of only \$2.75 accruing to the Dominion from similar sources over the whole of Canada. And as the revenue requirements, per capita, from this source were thus demonstrated to be three times the normal for the whole of Canada, it naturally followed that, in order to maintain the same ratio, it was necessary that the subsidy which was to replace this revenue be calculated on a population three times the actual number. In other words, the British Columbia Customs being \$330,000 was equal to \$2.75 per head on a population of 120,000 upon comparison with Canada."



As you will recall, sir, the federal government did not accede to that, but they did fix it at one-half of what was claimed by British Columbia, namely, 60,000. That was an acceptance of the principle, and if the principle was accepted the logic of the situation should have been to have carried that on to its logical conclusion, unless for some reason it could be demonstrated otherwise.

I think if you will refer to our larger Brief submitted last spring "British Columbia in the Canadian Confederation", and if necessary have your statistical experts check it up, you will find that Confederation down to the present time British Columbia, in customs and excise duties, has always maintained its comparative lead over the other provinces. So that we press now, as has been done many times before, that there should be a debt allowance to the province of British Columbia on the basis of its original claim of a population of 120,000. That comes to a figure which is substantial. It comes to \$66,721,000 since Confederation. The same thing applies, and the same principle, to the 80 cents per capita. If the one should be allowed, the other should be, and that would be \$1,034,000. All these are set out in my brief, but I am going to tabulate them so that you will have a table before you.

The next question was the fact that quinquennial revisions were not given, that the same privilege was not given to British Columbia in that connection as was given to the Prairie Provinces. We have in this Brief departed from the figures that appear on page 20 in my Brief because as that time those figures were based on the actual grants that were given. I am now suggesting that if we are entitled to a grant on the basis of what should have been our assumed population at





Confederation, to put us on an equal footing with the other provinces of Canada, it should be a sum nearly double what was claimed at page 20.

Then we come to the question of debt allowance revision, and there we find, Mr. Chairman, a remarkable discrepancy between British Columbia and the other western provinces. Let me take first for purposes of comparison Manitoba and British Columbia.

Manitoba came into Confederation in 1870, and British Columbia in 1871. The debt allowance of Manitoba was on the basis of a population of 17,000, which was approximately its actual population. Ours was upon a basis of 60,000, but I say that if it had been done on the sounder basis of what was being surrendered to the Dominion, which otherwise the respective provinces would have available in their own treasury, on the question of customs and excise it would seem that the basis claimed by British Columbia was the sound and the equitable one. I have not figures, Mr. Chairman, of what the customs returns were in Manitoba at that time, but I am sure that that can be very easily obtained.

COMMISSIONER DAFOE: They had a local tariff, which continued until 1874.

MR. FARRIS: Yes, Dr. Dafoe, but I am quite sure they had no returns comparable to what was shown for British Columbia at that time.

COMMISSIONER DAFOE: In the Brief presented by the Norquay government to Ottawa in 1884, they claimed a per capita payment over ten years of \$10.86.

MR. FARRIS: On a per capita basis?

COMMISSIONER DAFOE: Yes.

MR. FARRIS: Of course that may be so. Have these things been presented?





COMMISSIONER DAFOE: I can give you a notation.

MR. FARRIS: It will be very interesting to see that, and I shall be glad to have it. As I understand the situation, Manitoba was acquired by the Dominion from the Hudson Bay Company at a price of £300,000. I am not criticising the position of Manitoba in this matter at all. All I am trying to do is to make a comparison between what the debt allowance has been for Manitoba and British Columbia. All the money, which British Columbia had up to that time spent or incurred in her own debt was charged up against her, but Manitoba came in without a debt. She was not charged with the purchase price of the territory that was acquired.

Then in 1885 there was a further adjustment of her debt allowance which brought it up from \$662,000 to \$4,000,000. And then in 1912 that was doubled.

I have here a table showing the federal subsidies and grants to the Provinces of Canada, issued by the federal Department of Finance in 1937, with which you are no doubt familiar, and I turn to page 10, which gives in one column the total allowance for debt, including land, added to the Act of 1884, and it shows for Ontario and Quebec jointly in round figures \$78,403,000; Nova Scotia \$11,500,000; New Brunswick \$8,781,000; Manitoba \$8,107,000; British Columbia \$2,029,000; Prince Edward Island \$4,884,000; Saskatchewan \$8,107,000, and Alberta \$8,107,000. So we find that the debt allowance to-day of Manitoba is \$8,107,000, with Alberta and Saskatchewan the same, and British Columbia \$2,029,000, and we submit in that particular there is no reason why British Columbia should not be brought on a parity with those other provinces.

When I addressed the Commission before, Dr. Dafoe with his passion for accuracy confronted me with the fact that in our Brief there was an inaccuracy because in our



Brief, at page 13 it was stated with regard to Alberta and Saskatchewan:

"Saskatchewan, with an actual population in 1901 of 91,279, was, upon entry into Confederation in 1905, allowed an assumed population of 250,000 for subsidy purposes. Alberta, with an actual population in 1901 of 73,022, was, at the same time, also allowed an assumed population of 250,000 for subsidy purposes."

Dr. Dafoe at once called my attention to the fact that there had been a tremendous growth in population in those few years between 1901 and 1905, with the result that the assumed population and the actual population of those two provinces at that time were about the same, and on checking up that was found to be true. At first that seemed to me to have some detrimental effect to the argument I was presenting, but on further consideration I am not so sure about that. It really is an illustration, it seems to me, of the unsoundness of taking populations in that way as a basis for the debt allowance, because here are these two provinces coming in in 1905, and they have no debts, and the reason they have no debts, I say in part at least was that they were being taken care of under the administration of the federal government. But supposing, Mr. Chairman, that instead of coming into Confederation in 1905 they had come in, in 1901, four years difference. If they had come in in 1901, and their actual population had been taken for debt allowance, it would have been 91,000 for Saskatchewan and 73,000 for Alberta. What conditions during those four years, outside of the mere fact that population had come in, due to the foundations which had been laid by the activities of the federal government -- what conditions were there that entitled them to a debt allowance in 1905 that was





three to four times as much as it would have been in 1901, and to have that fastened on for the future?

COMMISSIONER DAFOE: It is an indication of the benefit that sometimes accrues through procrastination.

MR. FARRIS: Yes, and of course, there is no question but that if British Columbia had waited it might have been better. But that is not the kind of test which this Commission is going to apply, Mr. Chairman. That is all I am saying. And so I am saying that whether my actual figures were right or wrong, and obviously they were wrong at that time, and I so stated a few days afterwards, it makes no difference in the fundamentals which you have to consider, and my submission is that in that connection British Columbia is entitled on a basis of comparison with the other three western provinces to have a debt allowance made at least comparable to those other provinces; and if that is so, she is entitled to have the amounts that have not been received paid, and not only that, but my submission is that they should be paid with interest. I cannot prove this statement, but the Board, better equipped in every way to do it, might do so. But I do feel there is something in this, Mr. Chairman.

I gave this analogy to Mr. Perry coming down on the train. If I was a boy and had a guardian who was to pay money for my development and advancement, and who in my teens, in the most critical years of my life, when a few thousand dollars would mean so much, embezzled the money that was to be used for my advancement -- I am not using the word "embezzled" for any purpose of comparison at all or with any idea of reflecting on the Dominion or on anybody else, but simply to test the principle -- and if when I got to be about sixty years of age and had not had the benefit of that money which I was entitled to





during my youth when it would have meant so much to my advancement, and if my guardian or his successors came to me repentant and wanting to make good that money, the mere payment of that money to me at sixty, say \$5,000, could not in any way be comparable to the value it would have been to me in my younger days. There is something of that idea in the delay in the payment of these moneys, certainly enough to justify us asking, if we are entitled to the payment of these moneys, to have also the interest paid upon it, and probably to ask interest upon the deferred interest that has not been paid. I give you that as a suggestion, that if we are entitled to the principal, we are also entitled to the interest, and to the interest on the interest that has not been paid.

I have read Maxwell's book and what information I could get, and I have not been able to find any principle that entitles Manitoba to be put on the same basis with Saskatchewan and Alberta that would not equally apply to British Columbia.

I say my mission is not to criticise what Manitoba got but rather to commend that as being a sound principle, and to ask that we be put in the same boat.

You will recall, sir, that about the time Manitoba had this increase in her debt allowance from \$4,000,000 to over \$8,000,000 in 1912, shortly afterwards the federal government promised to appoint a Commission to deal with the matter or similar matters in relation to British Columbia, and that two members of that Commission were actually appointed, but before the Commission was completed or before it had begun to function, the war came on and the matter was dropped.

It is true that Manitoba's territory was increased, and her enlarged area was 140,000,000 acres. But British Columbia's territory has always been nearly double that.



It is 229,000,000 acres, as against an increased area of Manitoba of 140,000,000 acres.

I have tabulated these items, Mr. Chairman, so that they can be added up, indicating on a percentage basis what the additional annual grants should be to British Columbia on that basis. I have put that into definite figures. I have done that, sir, at the request of this Commission, and in so doing, the only reluctance I have is that to me it is a side line compared to the essentials of the case of British Columbia as I see it.

Going back to the classifications at the bottom of page 5 and the top of page 6 of my Brief of Argument, Divisions Four and Five cannot be reduced to figures as I have attempted to reduce Divisions Two and Three. But when we are considering Two and Three, they must be considered in relation to the other provinces of the Dominion.

I have outlined in my Brief, beginning at page 21, that the contribution which British Columbia is making to Confederation is excessive, and at page 22 I have set out our position in regard to the Income Tax. I show there that over recent years more Income Tax has been taken from British Columbia than from Alberta and Saskatchewan and the three Maritimes, and that for the present year more income tax will be taken from British Columbia than from the three Prairie Provinces and the three Maritimes put together.

In the development of that argument I think I have shown that money is being taken from us called Income Tax by the Dominion, which in reality is merely money coming into British Columbia and helping us to cash in on the depletion of our natural resources. I say that if that is true in any substantial measure whatever, that should be considered not only in relation to a readjustment of the





right of the Dominion to take income tax, but it should at least be also considered when we come to claim parity with the other three western provinces in regard to the grants that we should have.

Then if you will look at it from the standpoint of Customs and Excise Duties, you find again that British Columbia is still contributing in every way not only for what is distributed over Canada but for what is actually consumed in British Columbia, out of proportion to the other provinces.

When you look at it from the standpoint of the purchasing of commodities in this protected area of Canada, in contrast with the benefits that we receive from the amount of our goods that are purchased from eastern Canada, again you find that the discrepancy is greater than for any other part of Canada.

I mention these things merely to remind you that there are no circumstances existing in connection with these fundamental factors in regard to the life of that country which permit of any suggestion that British Columbia should not receive at least equal treatment in regard to these grants with the other western provinces, and that they should date back to the times in which these allowances should have been made.

I do not think, Mr. Chairman, that there is anything more that I can add at this time. I may say that I have watched with the greatest interest all the representations that have been made by the other provinces. I was in hopes from a conversation that I had with the Chief Justice before any of the sittings took place that the analysis which your financial officers would make would be more of a direct attack or criticism on the material that was filed by the different provinces -- not with the expectation that there was anything wrong with what we ask





but because I have never yet in the practice of law found a case that did not have another side to it, and you feel as if you were fanning the air when you do not have the opposite side of the case put up to be explained or dealt with.

We in British Columbia are in this position: There has not been a whisper of criticism from a single province of Canada of anything that we have advocated in our behalf. That is exceedingly gratifying and must be considered as having some weight in the developments of this Commission.

In the second place, the Dominion government apparently has kept entirely out of the field. There is nothing coming forth from them in any shape or form, and so one has not the disadvantage or advantage of an approach from the Dominion government.

And then so far as those learned gentlemen who are working with you, analyzing what has been presented, are concerned, a number of Red Books came out in British Columbia very recently which seemed to be studies of a highly interesting and highly intellectual nature but hardly of the kind that I had been expecting -- not a critical analysis of any presentation that we have made. I may say in regard to those books that there has been no possibility yet of the government giving the Board any assistance in the study of those books because the session is on in British Columbia and the ministers and their staff are quite taken up answering all kinds of questions such as an opposition usually asks, and of the duties attendant on the session, and so it has been quite impossible to apportion these studies around amongst the different departments. If, Mr. Chairman, your Commission is desirous of having any comments made on these studies, I am sure it will be done as soon as it can be done, although I understand that this is the deadline for the presentation of the case for the province. (Page 10262 follows.)



Apart from the assembling of these figures there is not really very much that we have to add to what we have already presented, and so long as the test of the investigation which you are making is as established there is not much that we can add. I have only put these figures in - I will file them with you - for the reason that we were expressly asked by the Chairman to do so when the Commission was in Victoria.

I do not think I have anything more to say except to thank you again for the courtesy which has at all times been extended to those who have acted on behalf of the province of British Columbia. I wish the commission every success in its great undertaking.

THE CHAIRMAN: May I assure you at once, Senator Farris, how much we appreciate your words of regret at the enforced absence through illness of our Chairman, Chief Justice Rowell. We are as fully conscious as you are, indeed perhaps more so, of the loss that we have suffered in his retirement from the Commission. We shall take the necessary steps to bring to the attention of the Chief Justice and of Mrs. Rowell and of their family the kind remarks you have made this morning. May I also thank you for your congratulations.

We shall probably have some questions to put to you arising out of what you have said. You did not exactly voice a complaint, but you rather suggested that some criticism should have been offered by our research staff. Well, we were never under the impression that our experts should criticize the different provinces; we have always felt that their function was merely to look into the briefs submitted by the provinces in order to ascertain the facts and lay them before us. From those facts we can draw the necessary inferences and deductions, but we have never asked





them to offer any criticisms. In fact, we would not dare to ask them to criticise anything presented by any province without at least having some correspondence with the parties interested. It seems, therefore, that there is some misunderstanding in that regard.

MR. FARRIS: I wish to assure you, Mr. Chairman, that I was not making any criticism at all. I had rather thought that it would go in the way I have suggested, but I am not questioning your judgment in the least.

THE CHAIRMAN: We had to proceed in a cautious manner in these matters. I believe Mr. Stewart asked Mr. Pattullo on a former occasion for some information with regard to certain points that had come up. Have you any of that information available now? Is there any additional light to be thrown on the questions that were asked you then?

MR. STEWART: There was one further question I wished to ask.

THE CHAIRMAN: I believe Mr. Perry has some documents to file.

MR. FARRIS: I do not think Mr. Perry has any statement to make at the present time.

THE CHAIRMAN: Mr. Stewart, I believe, would like to ask you some questions. Are there some tables which you wish to file with us now?

MR. FARRIS: We are making some slight corrections in them, and when this is done we shall be ready to hand them in.

COMMISSIONER DAFOE: Have you read the debate that took place in the House of Commons with regard to the adjustments made with Manitoba in 1912?

MR. FARRIS: No, Doctor, I have not.

COMMISSIONER DAFOE: They are quite interesting.

MR. FARRIS: I have never had the occasion to look them up.





COMMISSIONER DAFOE: In order to have it on the record I should like to refer briefly to the remarks made by Sir Thomas White on that occasion: Mr. White, afterwards Sir Thomas, in submitting the measure providing for the changes, said:

"I do not believe it possible to say that the allowances which are now made to the several provinces in lieu of debt are on any logical basis. ..."

In other words, they were just an expedient of government. Then he goes on to say what the purposes were:

"If my right hon. friend ..."

That is to say, Sir Wilfrid Laurier.

"If my right hon. friend will bear in mind what we desire to do in the case of the bill is to put Manitoba upon a precise equality with Saskatchewan and Alberta, he will have no difficulty whatever in understanding the terms of this resolution. ... Manitoba is given five per cent allowance on \$8,107,500, precisely the same amount as is given to the provinces of Alberta and Saskatchewan. ... We are trying to put Manitoba in the position in which it should have been put in the year 1905 when the provinces of Alberta and Saskatchewan were constituted."

You will find the debate quite interesting. Unfortunately, I have not the exact date. Particularly interesting is the next quotation. Mr. White rejoiced that Alberta and Saskatchewan had been generously treated:

"But we must go further and put the pioneer province of the West in the same position as these favored children in the Confederation. And public opinion in eastern Canada will sustain that position because it is the application of simple justice to Manitoba.... Not only will the other provinces not be dissatisfied



but will abundantly approve the course.' Question must be approached in a broad statesmanlike way. 'The commercial hope of Canada lies to-day in the great West. There is room there for millions and tens of millions, and Manitoba is the pathfinder.'"

It is difficult to deal with debt allowances on any logical basis, as Sir Thomas White pointed out. They were applications to particular circumstances. With respect to Manitoba, it seems to me it must be always borne in mind, thinking more of the earlier adjustments, that in a very particular sense Manitoba was a ward of the Dominion government. It had no source of revenue. It is obvious that after the first distributions of debt allowances, which were made on some sort of logical basis, debt allowance became an instrument of policy. In the case of Prince Edward Island, where they did not arbitrarily enlarge the population, they raised the debt allowance to fifty per head, showing that there was no system about it. I am familiar with the repeated applications of Manitoba to Ottawa. They were continually pointing out that they must get more assistance. To enlarge their subsidy would have been to destroy the fetish of equality to which the Dominion government clung, and so they gave an enlargement of debt allowance. I do not say that that invalidates your argument that British Columbia should have been treated more generously than to have been given a debt allowance at the outset which only netted \$31,000 a year. Their action may be open to review on that point, and I express no opinion, but I suggest that perhaps Sir Thomas White was on good ground when he said that there was no logic in the way in which the debt allowance was applied.

MR. FARRIS: I should like to think that there was some logic in bringing British Columbia into line.

COMMISSIONER DAFOE: Perhaps there will be logic hereafter.





THE CHAIRMAN: Are there some questions that you wish to ask, Mr. Stewart?

MR. STEWART: During the discussion in British Columbia, Senator Farris, you intimated that you would have a definite statement to file subsequently in connection with unemployment insurance and unemployment relief. You will find that at page 5143 of the record.

MR. FARRIS: I am sorry if that is so, Mr. Stewart, because it has not come to my attention. What was the statement about, may I ask?

Mr. STEWART: It was in reference to unemployment relief and unemployment insurance. An undertaking was given to supply a statement covering your views as to the relation between the two, and the question of administration. In connection with the special claim of British Columbia to equality with Manitoba and the other two western provinces, I have two suggestions to make, and I should like to get your view on them. In the first case of debt allowances and subsidies to Saskatchewan and Alberta do you not think that in making these the Dominion had in mind the fact that it was retaining the natural resources within those provinces, alienating them for Dominion purposes, and, in connection with many millions of acres, under terms that rendered them tax exempt over a long period? Do you not think that such a consideration must have influenced the Dominion in making these large allowances?

MR. FARRIS: On the other hand, when they returned the lands they acknowledged no such principle as that.

MR. STEWART: We do not know; it is not referred to in the report.

MR. FARRIS: We do know that compensation was given for the lands.

MR. STEWART: These claims were urged very strongly by





the provinces.

MR. FARRIS: The debt allowance was not reduced.

MR. STEWART: Quite so. As a matter of fact, in your opinion, is "debt allowance" a proper designation of the capital of \$8,107,000 that was set up for these provinces, there being no debt?

MR. FARRIS: I think it was just a heading that was used in order to make the grants.

MR. STEWART: Fundamentally, it was the requirements for the purposes of the governments of the three western provinces that dictated the allowances.

MR. FARRIS: I do not know.

MR. STEWART: In your comparative statement -

MR. FARRIS: I should say it would be more logically on the basis of need than on the theory that is professed to be followed.

MR. STEWART: It certainly is not applicable to the financial position of the province as the original debt allowance was applicable.

MR. FARRIS: In my judgment this whole question of debt allowances is an illogical one. We have been struggling to work out a theory, and Mr. Perry has a rather ingenious one which I will ask him to file with the department. It is based on density of population. It goes on the theory that when you are considering grants of this kind you should take into account the stage of development at which the province has arrived at the time the grant is made.

MR. STEWART: That could hardly be applicable to the considerations that were in mind in 1867 as regards the original provinces.

MR. FARRIS: Historically, British Columbia was in existence but we were away beyond the frontiers of those days. We were just a handful of people and some Indians



and we could not be considered to have reached a comparable stage of development. That is one fact that will help the Commission in revamping the situation. With modern development, each province is to-day more or less on the same scale of development, roughly speaking.

MR. STEWART: That would tie in to some extent with your views on the cost of administration in British Columbia. It has some relation to density of population.

MR. FARRIS: Yes.

MR. STEWART: Logically, that would hardly come in on debt allowance. It would be a new type of subsidy.

MR. FARRIS: I should think so. It is more logically related to the 80 cents, if you preserve that.

MR. STEWART: Might it not be said that the revision for Manitoba was based on the huge addition of territory and the considerable addition of population in 1912, constituting a new point of departure?

MR. FARRIS: What was the additional population?

MR. STEWART: I do not know.

MR. FARRIS: That might be so, and that is why I mentioned it. It would be a useful argument to apply to British Columbia, because our territory in relation to population is so much greater. I would also impress upon the Commission this fact which I have already touched upon. Territory alone does not add very much to cost of government; it is only territory that is being opened up that adds to such cost. In British Columbia we have, I suppose, a territory that is larger than the settled area, which does not cost us anything; but we have still a settled territory that costs us more comparably than similar territory in any other part of Canada. Take everything south of the Grand Trunk Pacific railway; there you find a vast area with all the physical disabilities and the difficulties that we have





to cope with. That area is not as large as the area north of the Grand Trunk Pacific and yet apparently that northern part has not cost very much because there is nobody in it.

MR. STEWART: There is another point I wish to touch upon. In the treatment accorded to the prairie provinces there was something that struck me as perhaps blurring to some extent the parallel. The retention by the Dominion of the natural resources meant that the location of settlers was taken out of the hands of the provinces, who nevertheless had to supply the local conservation; whereas in the case of the other six provinces, retaining control of their natural resources, they in fact controlled the settlement of land and could therefore arrange for settlement and location of industry in a manner that was consistent with local economy.

MR. FARRIS: That is a fine theory but none of them ever lived up to it.

MR. STEWART: At any rate, the prairie provinces were precluded from any say in the location of settlement.

MR. FARRIS: Yes; but I do not know that as good a job was not done as in any of the other provinces.

MR. STEWART: Yet the record at Ottawa shows protest after protest from the western provinces with regard to the opening up of distant and remote territories, thus imposing a heavy burden upon the local administration of the provinces.

MR. FARRIS: We in British Columbia have criticized





ourselves for the same thing.

MR. STEWART: In connection with income tax, the fact that British Columbia has paid in income tax a sum slightly in excess of that paid by the three maritime provinces, Alberta and Saskatchewan, indicates that British Columbia had the income on which to levy that tax.

MR. FARRIS: Yes, but that statement is subject to certain qualifications.

MR. STEWART: I can understand that. To some extent the question of diminishing resources must be taken into consideration.

MR. FARRIS: Yes, and to some extent the fact that we have not the same subsistence type of farming that there is in other provinces. And I did try to make another point out of the fact that one company alone, the Consolidated at Trail, pays over \$2,000,000 of revenue a year to the province.

MR. STEWART: The other provinces are also faced to some extent with the same problem of paying income tax on diminishing capital assets.

MR. FARRIS: But take Ontario and Quebec; they receive a compensation in connection with the tariff which we do not enjoy.

MR. STEWART: Yes, but take New Brunswick's forests.

MR. FARRIS: That is so, but they do not pay very much income tax down there.

MR. STEWART: When we make income we pay.

MR. FARRIS: I know, because I have lived down there and I go there twice a year.

MR. STEWART: Take our coal mines. The provinces of Quebec and Ontario, I may add, have also experienced a depletion of their forests - a marked depletion.

MR. FARRIS: Yes, but simultaneously with that they are



building industries and they are doing it through the tariff. We are draining our natural resources and we are not building up industries. I am told that in a very few years our resources will be exhausted. Perhaps Professor Angus can say how many years.

COMMISSIONER ANGUS: From twelve to fifteen.

MR. FARRIS: Yes; our forests will be gone, and what shall we have to show? We have nothing for our people, nothing to take their place. One solution would be reforestation.

MR. STEWART: That problem has been solely within the hands of the government of British Columbia to deal with.

MR. FARRIS: With all the income we had, we have been running into debt. Only in two years since Confederation have we not budgeted for a deficit, and the Dominion government does not give us any consideration. Suppose we started a policy of reforestation; the Dominion government is not allowing, out of the income it is taking from British Columbia, any contribution towards that. This year they are taking more income tax out of British Columbia than the province itself.

MR. STEWART: I think, Mr. Chairman, that is all I have to ask Senator Farris.

THE CHAIRMAN: We usually file all exhibits introduced in public sittings. I understand, Senator Farris, that you are not prepared just now to file the originals of your documents. Can you give us an idea of how many you will have so that we may reserve at once the numbers to apply to them? How many exhibits do you think you will have?

MR. FARRIS: I understand there will be seven.

MR. STEWART: They will be numbered consecutively from 414 to 420 inclusive.

MR. FARRIS: Mr. Perry will be glad to explain any of



the details that may not have been made clear to you this morning. I do not know whom he should get in touch with.

THE CHAIRMAN: Mr. Skelton, the Secretary of the Commission, will be glad to get in touch with him. You said that you did not have time to go into all our research studies.

MR. FARRIS: I have not, Mr. Chairman.

THE CHAIRMAN: I believe it was made clear to you that you may submit anything you wish to have us know in connection with any representations of these studies up until Christmas.

MR. FARRIS: Yes, I understood that.

THE CHAIRMAN: Of course, we wish to give you every opportunity to make your representation as clear and complete as possible. Do I understand that this closes the presentation of your claim? Is your submission complete?

MR. FARRIS: Yes, I think so.

THE CHAIRMAN: We do not wish to confine you in any way; we want you to have every opportunity to make your submission as satisfactory as you can. Are you satisfied, Mr. Farris?

MR. FARRIS: Yes, Mr. Chairman; and if at any time there is anything in our claim in regard to which you would like to have further explanations, we shall be glad to give you any additional information you may require.

THE CHAIRMAN: I think we will hear Mr. Massey now, on behalf of Prince Edward Island.

SUPPLEMENTARY SUBMISSION BY PRINCE  
EDWARD ISLAND

MR. W. E. MASSEY(Provincial Auditor, Prince Edward Island): Mr. Chairman, I have been delegated by the Hon. Thane A. Campbell, Premier of Prince Edward Island, to





present a further submission on behalf of his government. Before going into that submission, however, I should like to convey to your Commission our government's regret on hearing of the retirement of Chief Justice Rowell from the Supreme Court of Ontario and also from the Chairmanship of the Royal Commission on Dominion and Provincial Relations. We trust that he will soon be restored to health.

This submission, sir, deals with one phase of social service, and that is, old age pensions. When the government of Prince Edward Island presented their case before the Commission in Charlottetown in February last they dealt with this service but they did not discuss the merits of a contributory or of a non-contributory system of old age pensions, and I will briefly deal with that question now. Perhaps I might submit the brief as it stands:

"A FURTHER SUBMISSION BY THE GOVERNMENT OF PRINCE EDWARD ISLAND TO THE ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS BY W. E. MASSEY, PROVINCIAL AUDITOR, REPRESENTING HON. Thane A. Campbell, PREMIER AND ATTORNEY GENERAL

#### OLD AGE PENSIONS

"In the course of our brief and presentation, we did not discuss the merits of contributory and non-contributory Old Age Pensions. This question we regarded as one of policy, rather than one of Dominion-Provincial Relations.

"Since, however, the subject has been much discussed in the briefs and submissions of the other provinces, and in the study by Mr. A. E. Grauer, we feel it only proper to state that the Government of Prince Edward Island strongly endorses the principle of contributory Old Age Pensions. We feel that the scheme should be placed on a contributory basis at the earliest possible moment, and that the non-contributory pension should



remain available only as emergency relief for needy aged persons who for some reason or other have been unable to contribute to the general fund.

"If the Dominion took over the entire responsibility for Old Age Pensions and placed them on a contributory basis, it is felt that a ratio could be devised which would prevent the Dominion contribution from being any greater than it is at the present time, while relieving the provinces entirely of their burden under this head.

"From the point of view of policy, it may also be pointed out that a contributory scheme would be an incentive to thrift and economy, whereas the present non-contributory scheme is destructive of those two virtues and leads to paternalism and reliance on the state."

May I take this opportunity, Mr. Chairman, to congratulate you personally upon your elevation to the Chairmanship of this commission. I can assure you that you and your colleagues have the best wishes of the people of my province.

THE CHAIRMAN: Thank you very much, Mr. Massey. Do I understand that this is the only recommendation that you have to make on behalf of your province? Do you consider that your case is entirely covered by the submission you made last spring and by this supplementary brief that you have now read to us?

MR. MASSEY: Yes, I think so. We should like to have this brief included in our case. It is the only addition we have to make.

COMMISSIONER ANGUS: I suppose that while this is a matter of policy, there is implicit in this recommendation the suggestion that the Dominion should have jurisdiction to make old age pensions contributory ?



MR. MASSEY: Yes sir. In the brief which we submitted last February, we recommended the Dominion government taking over the old age pensions system. We believe that the Dominion as a whole is the only governing body that could place old age pensions on a contributory basis. In some provinces you might have a non-contributory system and in others only a limited contribution. Perhaps in our province it would be compulsory. For that reason we think it ought to be on a dominion basis.

MR. STEWART: This supplementary brief on behalf of Prince Edward Island will be Exhibit 421.

EXHIBIT 421: Further submission by the government of Prince Edward Island to the Royal Commission on Dominion-Provincial Relations by W. E. Massey, Provincial Auditor, representing Hon. Thane A. Campbell, Premier and Attorney General - Old Age Pensions

The Commission thereupon adjourned.





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ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

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OTTAWA, NOVEMBER 28, 1938

REPORT OF PROCEEDINGS

Official Reporters:

H.E.Oliver

T.S.Hubbard





OTTAWA, ONTARIO, NOVEMBER 28, 1938

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## ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

OTTAWA, ONTARIO, NOVEMBER 28, 1938

The Royal Commission appointed to re-examine the economic and financial basis of Confederation and the distribution of legislative powers in the light of the economic and social developments of the last seventy years, met at the Parliament Buildings, Ottawa, Ontario, on Monday, November 28, 1938, at 2.30 p.m.

PRESENT:

DR. JOSEPH SIROIS ..... CHAIRMAN

JOHN W. DAFOE, ESQ.	)	
DR. ROBERT ALEXANDER MacKAY	)	
PROFESSOR HENRY FORBES ANGUS	)	Commissioners

Commission Counsel:

Louis S. St. Laurent, Esq., K.C.

Secretariat:

Alex. Skelton, Esq.	Secretary
Adjutor Savard, Esq.	Secrétaire Français
R.M. Fowler, Esq.	Legal Secretary
Wilfrid Eggleston, Esq.	Assistant to the Secretary

FOR THE MANITOBA GOVERNMENT:

Hon. John Bracken	Premier
Hon. Stuart Garson	Provincial Treasurer
Hon. W.J. Major	Attorney General
Dr. A.R. Upgren	University of Minnesota
Dr. Alvin H. Hansen	Harvard University
Dr. Jacob Viner	University of Chicago



Railway Committee Room,  
House of Commons,  
Ottawa, Ont.,  
November 28, 1938.

AFTERNOON SESSION

The Commission met at 2.30 p.m.

OPENING STATEMENT BY THE CHAIRMAN

to

THE GOVERNMENT OF MANITOBA

THE CHAIRMAN: Premier Bracken and gentlemen, it is my agreeable duty to wish you on behalf of my colleagues and myself the most cordial welcome here.

On the 29th of November, 1937, one year to-morrow, in the city of Winnipeg this Commission was opening its public sittings. The Commissioners have since heard representations in every capital of this Dominion. By a happy coincidence we are devoting our last public meetings to hear further submissions by your province. We have much pleasure in seeing before us familiar figures of persons we had the honour to meet in Winnipeg. But unfortunately one of us is missing. By reasons of ill health, our Chairman, Chief Justice Rowell, found it necessary to resign. With much reluctance the government felt obliged to accede to his request and relieve him of his responsibilities on the Commission.

I shall not repeat what I said on Thursday last, when the New Brunswick delegation appeared before us. Let me say, however, that I deeply feel the difficulties of my task; but relying on the experience and judgment of my colleagues, I may assure you of my entire good will.

Perhaps you would explain to us, Mr. Premier, how you intend to proceed in the presentation of your case.

PROCEDURE IN SUBMITTING MANITOBA'S CASE

HON. JOHN BRACKEN (Premier of Manitoba): Mr. Chairman



and Members of the Commission, I am sure we appreciate very much the cordial welcome which the new Chairman of the Commission has extended to the Manitoba delegation. It is my understanding, Mr. Chairman, that at the moment you just wish an outline of what we intend to present to you.

THE CHAIRMAN: How you intend to present your case.

HON. MR. BRACKEN: The early pages of our Brief deal with that, Mr. Chairman.

THE CHAIRMAN: Very well, will you proceed.

SUBMISSION BY THE GOVERNMENT OF MANITOBA

HON. JOHN BRACKEN (Premier of Manitoba): Turning to our Brief:

"Mr. Chairman  
and Members of the Commission:

Mr. Chairman, at the outset of my remarks may I on behalf of the people of Manitoba offer my congratulations to you on your elevation to the Chairmanship of this Commission. You stated a few days ago 'that this Commission is like a family inspired by a great presence still among us.' We humbly and respectfully ask to be included in that family. We have every confidence, sir, that the cause of national unity, so close to the heart of Mr. Rowell, will be ably supported and furthered by the Commission under your leadership.

At this time may I take the opportunity also of paying a tribute to the former Chairman of the Commission. This I do not only on behalf of myself and colleagues but on behalf of the people of Manitoba. We came to respect the Honourable Mr. Rowell as a great Canadian, one who has given unstintedly of his talents to the furtherance of all that was best in Canada. We pay particular tribute to him for his patient, kindly and wise direction of





this Commission. We feel that this body is still the Rowell Commission, and it is in the spirit of national harmony which he so ably fostered that we appear before you to-day.

"I also wish to pay tribute to this Commission for its labours during the past year and also for the contribution of the eminent group of experts with which the Commission has surrounded itself. We feel you have done a great and important work for Canada. As a result of your efforts we now have for the first time a complete economic history of this country and authoritative statements upon problems which have never been fully understood by Canadians generally. It is only through such studies as you have made that there will come a thorough understanding of the basic problems which confront this country.

"Last November, as you have pointed out, the Manitoba government, on behalf of the people of the province, made its first submission to this Commission. At that time we were assured that we would be given a further opportunity to express our views on important matters relating to Dominion-Provincial relationships. We welcome that opportunity, Mr. Chairman, for several reasons. You will recall that we were the first province to present its case to you, and naturally we were under limitations in respect to time which I think the Commission will fully appreciate. Since that time, you as a Commission, have taken the opportunity not only to study the problems raised and to consider the suggested solutions of those appearing before you, but what is more important you have analyzed those problems and solutions from the standpoint of the Canadian economy as a whole.



"In addition to making a further presentation to you at this time we would be glad to discuss with you any phase of Manitoba's submission upon which you may deem an exchange of views to be of mutual advantage.

"For our guidance and assistance in these hearings you have furnished us with the reports of your advisory economists on many aspects of the structure and problems of the Canadian economy. While it would have been much more helpful to us if we had received these reports earlier in the year, the study which we have been able to give to them indicates that a great service has been performed by this Commission and its staff. We find in these reports a common meeting ground which in general we are inclined to accept as a reasonable approach to the solution of some of our major social and economic problems.

Your experts have prepared two reports which are of particular significance to Manitoba. I refer to the Commission's studies dealing with Monetary and Tariff Policies. We come prepared at this time to discuss these problems further. This we do, not to stress our own point of view but because we believe that this Commission, and the people of Canada, desire an objective, dispassionate and thorough appraisal of these policies. We hope and expect that such an appraisal will yield a fund of knowledge and information which will permit future policies to be considered in a clearer light than in the past. We therefore wish you to accept Dr. Viner of the University of Chicago, and Dr. Hansen of the University of Harvard, not as special pleaders for Manitoba's case, but as two of the outstanding economists of this Continent, and we hope that the material they present, and the discussions which may arise therefrom will be of very great assistance in helping to arrive





at solutions of the problems which surround our economic life.

"The subjects we shall discuss with you are few but the details within each are more numerous."

In answer to your question, Mr. Chairman, and for the information of the Commission, our presentation will be made as follows: I shall first made a general statement. Then to-morrow morning Dr. Hansen, Professor of Political

Economy, Harvard University, will deal with the question of Monetary Policy; and when he is through, probably in the afternoon, Dr. Jacob Viner, Professor of Political Economy, University of Chicago, will deal with the Tariff Policy. Then to conclude our presentation the Hon. Mr. Garson, our Provincial Treasurer, will give a review and summary of Manitoba's general position.

If I may now proceed with my own General Statement, I will do so:

General Statement

by

Premier John Bracken

"Of the seven provinces other than Manitoba, which made representations before this Commission, six were in substantial agreement on the fundamental issues which brought it into existence, namely, the inequitable distribution of the advantages arising from Confederation and the need for a readjustment of Dominion-Provincial financial relations.

"In presenting its case the government of Ontario attacked the western viewpoint in general but directed its argument more specifically against the representations made in the Manitoba brief. The observations we shall make at this hearing will therefore be in part a rebuttal of certain of the arguments presented by the government of Ontario, and





in part a restatement of the case as presented last December.

"As I have already said, I shall make a general statement on the arguments of the Ontario Case; Dr. Hansen and Dr. Viner will deal with the more specific arguments advanced, and the Hon. Mr. Garson will summarize Manitoba's representations in the light of the situation as it is to-day.

Premier Hepburn's Argument

"At the outset I wish to deal with a few points in the brief presented by the Hon. Mr. Hepburn, Premier of Ontario. I shall try to show wherein some of his points are weak or erroneous or even fallacious in so far as they seek to nullify the arguments for a readjustment of Dominion-Provincial responsibilities.

"Premier Hepburn's first point was a complaint that he had not been fairly notified of the Commission's appointment. He said 'several cats' had been let out of the bag when it was disclosed in the 1938 Manitoba budget speech, given on February 7th last, that Manitoba had conferred at Regina on June 3, 1937, with Saskatchewan and Alberta about Commission proceedings, to use his own words 'before most of us....knew there was to be a Rowell Commission'."

In answer, Mr. Chairman, to that statement of Mr. Hepburn, one has but to read his own budget speech of the previous year. I have a copy of a portion of it here, and it reads as follows:

".....Whether a continuance of such subsidies and benefits (to municipalities) will be possible in future years is a matter that will, in some measure, depend upon the findings and recommendations of the Royal Commission which is to be appointed by  
the Dominion



Government and which, it is expected, will conduct an enquiry into the whole system of taxation in Canada with a view to its thorough revision on an economic, equitable and scientific basis with full regard to the taxpaying capacity of the people in regard to the taxes properly collectible by the Dominion, by the province, and by the municipality."

I think perhaps that is a sufficient answer to this statement by the Premier of Ontario.

MR. ST. LAURENT: Have you a note of the date when that speech was delivered, Mr. Premier?

COMMISSIONER DAFOE: It was March 9.

HON. MR. BRACKEN: Yes.

MR. ST. LAURENT: That is the budget speech referred to on the top of page 5 of your Brief.

HON. MR. BRACKEN: Yes. Continuing with the Brief:

"When the Hon. Mr. Hepburn implies that we had the ear of the Dominion Government in some mysterious manner, we must make it quite clear that this implication is wholly without foundation. The simple fact is that on February 16, 1937, in the House of Commons, nearly four months before the Regina meeting that Mr. Hepburn referred to, the Prime Minister of Canada (Mr. Mackenzie King) made a public announcement of the proposal to appoint a Royal Commission for this purpose, the scope of which he clearly indicated. The text of Premier King's announcement in the House of Commons was widely broadcast in the newspapers at the time. It is therefore difficult to understand how the Premier of Ontario failed to know a commission was to be named. In any case this was the only word we had on the subject until nearly six months later. We relied on Premier King's indication that the scope of the Commission would be broad and we commenced the



preparation of our case accordingly.

"In view of the explicit statements made by Mr. Hepburn in his budget speech of March 9, 1937, in which he referred specifically to the appointment of this Commission, it is hard to understand how he could claim a year later that the Province of Ontario had been insufficiently notified of the proposed Commission.

"The whole matter is however quite irrelevant to this Commission except that Mr. Hepburn states in conclusion on this point that the Prairie Provinces were thereby enabled to start working on their respective cases before Ontario, and also that these Provinces 'ganged up' on Ontario. Well, Mr. Chairman, the only reason we got busy in June, 1937, and cooperated with Alberta and Saskatchewan was because we were seized with the urgency of the problems before us and the necessity for speed in preparing our case as early as possible.

"It is true that as early as December 1936 we urged upon the federal government the necessity of making a study of Dominion-Provincial relations. It is also true that as soon as Mr. King announced that such a commission would be appointed we began immediately to consider ways and means of presenting our case. The gravity of our economic situation and the urgency for constructive action were the only motives which animated us in this connection. We acted on exactly the same information that Mr. Hepburn had and if he did not choose to commence early preparation of Ontario's Case it is, of course, his own concern.

"Now that he has raised the point, however, I may say that the government of Manitoba was at a





distinct disadvantage in the preparation of its case, in that we had to present our brief first or before that of the government of any other province. Manitoba appeared before this Commission on November 29, 1937, three months after the terms of reference were announced. The Hon. Mr. Hepburn's government appeared eight months after the terms of reference were announced.

"Another point the Premier urges is that matters concerning the structure of Confederation should not have been assigned to a Commission; but that, regarding Confederation as the outcome of conferences, he thinks that if there is to be any change in Confederation, it can be brought about only by renewed conferences of the representatives of the people and with unanimity of approval. We agree with him that any substantial change in Confederation should be brought about only by renewed conferences of the representatives of the people, and it is perfectly clear from the terms of reference to this Commission that that is to be the procedure in this case. It was always clearly the intention so far as we knew that this Commission was to be but a fact-finding body without any power except to find facts and to make recommendations for consideration by just such a conference as that which the Hon. Mr. Hepburn envisages.

"The facts, economic, financial and political, with which such a conference would have to deal, are voluminous and complex. The ascertaining, the classification, and the analysis of such facts is the work of this Commission. It is a tremendous task. If this task were left to a political conference, in addition to the task of deciding what



should be done about the facts when ascertained and agreed upon, one would need to be a very great optimist indeed to think that such a conference would make progress even at a snail's pace.

"It may be the desire of some people in Canada that no progress shall be made towards a rational Dominion-Provincial financial relationship; but it is our contention that such progress must be made, and made promptly, if the great inequities which Canadians in different parts of Canada have already suffered are not to continue and to increase and to further aggravate the spirit of disunity that appears from time to time throughout the nation. And as we hope to show in the course of our present submission, there is no group of people in Canada which has a greater interest in the rational progress and development of this Dominion than the citizens of the Province of Ontario.

"The Premier of Ontario in discussing certain functions of government which he calls 'new services' presumably sees a danger that if, to use his own words 'we do not strengthen the hands of the government closest to the people' we should 'get ready to look back on the last seventy-five years as merely an interlude of freedom'. That these new social services are with us permanently as part of a modern economic society, cannot surely be denied by anyone conversant with the functioning of our Canadian democracy; and one of the prices of continuing democracy is that these services shall be successfully carried on. In that light it is surely not evident that democracy

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is more in danger when such services are carried out by a central jurisdiction rather than by a local one. On the line of argument presented by the Premier of Ontario, it would seem to follow, for example, that unemployment relief, 'a new social service' should be carried out by that jurisdiction 'closest to the people', which in fact is the municipality. If anything is clear from our recent experience, it is that unemployment relief is a problem far exceeding the capacity of municipal and even of provincial governments, and that democracy is much more endangered by a defective system of unemployment relief carried out by local governments than it is by an efficient system carried out by the Federal government."

MR. ST. LAURENT: In the Brief you presented a year ago, Part VII, at page 62, there was a statement that Manitoba would like in connection with unemployment insurance to reserve the right to make further representations on this point when the final report of the Relief Commission -- the Purvis Commission -- comes to hand. Will there be anything further on that point?

HON. MR. BRACKEN: Yes. Mr. Garson, when he comes to sum up Manitoba's case at the end will deal with that quite fully. Continuing with the Brief:

"There is also a sound economic reason why such services should be the responsibility of the superior jurisdiction. We submit that it has been made abundantly clear both from our own examination of the problem and from the studies which the Commission itself has made that one of the most distinctive features of the Canadian economy is that the incomes of the several regions of the economy are much more variable than is the income of the country as a whole. In the light of such a consideration it seems but





economic wisdom that that minimum of social services necessary for maintaining national unity can be best provided and maintained by the Federal government. And furthermore Mr. Chairman, it is our view that only by providing a reasonable equality of social services as among people in all parts of Canada can we foster that spirit of national unity which we all so fervently desire.

"During this 'interlude of freedom' which Mr. Hepburn talks about, it is significant that the powerful weapons of economic control resided in the Federal authority. In the Canadian scheme of things, the Federal government since 1867 has exercised the really important powers of government in Canada. The Federal authority has dealt with fiscal policy, with monetary policy, with trade and commerce, with national defence and with immigration and settlement. And yet democracy has survived. I submit, Mr. Chairman, that the addition of a few social services would represent such a slight increase in federal powers in relation to the powers now exercised, that there is no fear whatever of the results indicated by Mr. Hepburn.

#### Taxation and the West

"Premier Hepburn's reasoning, to the effect that the taxes to raise revenue for social services are usually added to prices is not without interest in western Canada. Under our present unemployment relief system, roughly two-thirds of the cost of handling unemployment relief is left with the provinces and municipalities. So far as any provincial taxes which are levied to raise revenue for relief and social services in western Canada are concerned, it is obvious that since western



Canada is an exporting region, depending upon prices fixed by world conditions, it is impossible for western Canada to add effectively such taxes to its prices because the prices which western Canada can get for its products are competitive prices in the world market. Western Canada, in order to sell its goods in the world market, must meet the competition of other countries seeking to sell therein the same kind of goods. It is that competition rather than western Canada's cost of production which determines the price which western Canada can get for its goods in the world market. Thus, if western Canada, as part of its costs of production, has to pay Federal, Provincial and Municipal relief and social service taxes, it cannot add the amount of these taxes to its price, a price which is determined by competition in the world market. To that extent, therefore, that the western Canadian wheat grower's costs are increased by this taxation, to that extent will his net return, as distinguished from his gross return, from the sale of his wheat be reduced.

"Upon the other hand, in the manufacturing provinces of Quebec and Ontario, which enjoy the protection of the Canadian tariff, taxes can be, and as Premier Hepburn himself has noted, are added to prices. And these enhanced prices are the prices which the western farmer has to pay for the goods manufactured in large part in Ontario. Thus the western farmer has his own Dominion, Provincial and Municipal social service taxes in effect deducted from the price which he can get for his own goods in the world market and he also has indirectly to pay, in part, the Ontario and Quebec Federal, Provincial and Municipal relief taxes which are usually added



to the prices of those goods manufactured in Ontario and Quebec and sold in western Canada.

Capitalized Wheat Growing Interests

"Then Premier Hepburn proceeds to oppose the Dominion Government entering upon a scheme of unemployment insurance; He says:

'When the Prime Minister of Canada wrote stating that the Federal Government was ready to provide that service (i.e. unemployment insurance), I promptly promised the cooperation of this province because the matter had so recently been discussed with the people; but subsequent events have led me to consider the matter may be better left with the provinces; for no sooner had the matter been talked about when the capitalized wheat growing interests of the West began a drive for crop insurance.----The principle of insurance, I take it, depends upon the feasibility of predicting, with a measure of assurance, what is likely to happen in the future. The injection of the prospects of 'Whest Crops' into the scheme of insuring wage earners alters the picture. Further, if the farmers are entitled to unemployment insurance when they have no crop, their employees are even more entitled to claim on the insurance fund.'

"It is difficult, Mr. Chairman, to comment appropriately upon this statement and still keep within the amenities of public discussion. We have in the past seven or eight years been through considerable hardship in western Canada, and in some provinces at least have made very great sacrifices to maintain our own institutions and our own credit, among other reasons, in order that the credit of the





Canadian nation might not suffer. In the face of these efforts, no spokesman for western Canada can remain quiet while the Premier of the largest and wealthiest province in Canada publicly refers to the 'capitalized wheat growing interests of the West beginning a drive for crop insurance'.

"Who are these capitalized wheat growing interests of the West of whom Premier Hepburn speaks? They are the customers of all Canadian factories and financial institutions. They are the taxpayers of the western provinces who have, perhaps not cheerfully but manfully, submitted to burdens of taxation far greater than Ontario has had to bear in order that the interest payable upon municipal and provincial securities could be met on its due date and in order that the credit of the Canadian nation might be kept sound."

MR. ST. LAURENT: Will your economists be able to offer the Commission anything further upon what would be a proper standard of measurement of the capacity to bear taxes and of the real burden of taxation?

HON. MR. BRACKEN: I do not think we have anything new on that.

MR. ST. LAURENT: It might be of interest to the Commission to have their views upon that.

HON. MR. BRACKEN: We have not brought anything new on that, but we can deal with it further if you like before these sittings are over.

MR. ST. LAURENT: I sat in on some discussions with the Commissioners, and I got the impression that anything further that can be put before them upon that would be very helpful.

HON. MR. BRACKEN: At our last sitting the Hon. Provincial Treasurer will be summarizing, and I will ask him



now to be prepared to discuss that further. Continuing with the Brief:

"These wheat growers are the people who for many years have submitted to a tariff policy which adds to their cost and benefits mainly other parts of Canada. These wheat growers have always paid high rates of interest. During the past eight years of drought, plagues and low prices, these wheat growers have had to suffer the workings of a monetary policy which, whatever its virtues, was not designed to relieve the desperate predicament of the wheat growers in the West.

"We think a climax is reached when the Premier of the Province of Ontario characterizes prairie farmers as the 'capitalized wheat growing interests of the west', by unjustly accusing them of injecting the prospects of 'Wheat Crops' into the scheme of insuring wage earners.

"It is true that in the interests of western Canada, some attention has been given to an examination of the possibility of crop insurance; but no responsible person in western Canada of whom I have ever heard, has, at any time, suggested that crop insurance was analogous to unemployment insurance or that it should be injected into the unemployment insurance picture or considered as being related to unemployment insurance in any way."

MR. ST. LAURENT: Just at that point, Mr. Premier, have you considered that portion of the Saskatchewan Brief at pages 277 and 332? On page 277, the Saskatchewan Brief dealing with this point says:

"For this province crop insurance appears to be the logical supplement for unemployment insurance.



It is not suggested herein that the Dominion should inaugurate a national scheme of crop insurance, but it is suggested that in the event of crop insurance proving feasible, the province of Saskatchewan should be given special consideration by way of assistance in the financing of such a scheme. In connection with unemployment insurance it is believed that the Dominion should have complete jurisdiction to deal with the whole question of labour, including minimum wages, hours of labour and the settlement of industrial disputes."

Then again, at page 332, the Saskatchewan Brief says under the heading of Social Services:

"The government of Saskatchewan is of the opinion that several satisfactory adjustments may be made under this head. The following specific recommendations are made:

(3) That consideration should be given to the enactment of a national scheme of crop insurance by the Dominion of Canada. In the alternative that special assistance shall be given to the Province of Saskatchewan in connection with the administration of a provincial scheme of crop insurance in case it should be decided that such a scheme is feasible. On the one hand it may be pointed out that a national scheme of unemployment insurance will be of less assistance to the Province of Saskatchewan than to the other provinces, while on the other hand it is fairly obvious that Saskatchewan has greater need for a scheme of this character than has any other province of Canada."

In view of that statement in the Saskatchewan Brief, is not the statement in your Brief rather broad that "no responsible person in western Canada...has at any time suggested that crop insurance was analogous to unemployment insurance or





that it should be injected into the unemployment insurance picture or considered as being related to unemployment insurance in any way"? Because here the provincial government of Saskatchewan does appear to have tied it up in some way with unemployment insurance; it says that unemployment insurance will be of less assistance to the province of Saskatchewan than to the other provinces, while crop insurance will be more beneficial to Saskatchewan than to some of the other provinces?

HON. MR. BRACKEN: We are aware that the province of Saskatchewan, because of its particular circumstances, had suggested that there was special need for something in the way of crop insurance for that province; but still we can see no very direct connection between crop insurance and a national policy for Canada of unemployment insurance.

MR. ST. LAURENT: I am not suggesting that there is, but I am suggesting that there is something in the Saskatchewan Brief which is perhaps not quite fully pictured by the statement in your Brief that "no responsible person in western Canada has suggested" there was any analogy between the two or any tie-up between the two. I would take it that the views of your government would not coincide with the two extracts I have read from the Saskatchewan Brief with reference to Crop Insurance and Unemployment Insurance.

HON. MR. BRACKEN: Well, Mr. Chairman, Crop Insurance is one thing and Unemployment Insurance is quite another thing. I do not think there is anything in the statement we have made in our Brief that needs to be adjusted to meet the representations made by Saskatchewan.

MR. ST. LAURENT: No, not as representing your government's views, but as a statement of fact, the statement in your brief is perhaps a little broader than it should have been in view of this submission in the



Saskatchewan Brief. Saskatchewan is a part of western Canada, and there is something there in the Saskatchewan Brief, from responsible persons, which does suggest some relation between Unemployment Insurance and Crop Insurance.

HON. MR. BRACKEN: What we have said in our Brief is that "no responsible person of whom I have ever heard has suggested that Crop Insurance was analogous to Unemployment Insurance or should be injected into the Unemployment Insurance picture or considered as being related to Unemployment Insurance in any way".

In the Province of Manitoba we are giving consideration at the present time to a study of Crop Insurance.

MR. ST. LAURENT: I am just suggesting that possibly what Premier Hepburn had in mind when he used the language you have quoted were these suggestions in the Saskatchewan Brief.

HON. MR. BRACKEN: Yes, but I still cannot see why a reference to Crop Insurance in the Saskatchewan Brief should justify any part of Canada saying: We cannot support a policy of Unemployment Insurance by the nation because somebody in Saskatchewan thought of Crop Insurance.

MR. ST. LAURENT: Well, I take it that when you drafted this language that appears at the top of page 11 of the Brief you had not specially in mind the statements in the Saskatchewan Brief that I have quoted.

HON. MR. BRACKEN: We knew that Saskatchewan was considering the question of Crop Insurance; they have a report on it, but we do not see any necessary relationship between that and a national policy for Canada of Unemployment Insurance.

Continuing now with page 11 of our Brief:

"Premier Hepburn's statement that 'The injection of the prospects of wheat crops into the scheme of insuring wage earners alters the picture' has no





foundation in fact and its inclusion in a printed Brief as an argument against the central government assuming the provincial responsibility of unemployment insurance is quite beside the point.

"Mr. Hepburn further states that governments like individuals must learn to live within their incomes. With that view there can be no difference of opinion. In the case of western Canada that is what we seek to do. And we could do it if we were in a position where, having sold our products in competitive markets of the world, we could buy what we needed at the same competitive world prices. But that, unfortunately for us, is not the case. We sell in the low market. We buy in the protected market to the advantage of Ontario. And now we have the Premier of the Province of Ontario tell us that we must live within our means. Well, Mr. Chairman, that too can be done. But having economized to the fullest possible extent in every other direction; having levied all the taxes that we can or are supposed to levy, there is only one other device to which we can resort in order to follow Premier Hepburn's advice 'to live within our means'. That is, if a reasonable adjustment of Dominion-Provincial relations be denied, we shall have no choice but to call in our creditors and advise them that an immediate adjustment of our financial obligations is necessary in the interests of the general welfare of the people of Manitoba.

"This is not to be taken as an ambiguous or irresponsible threat. It is a plain statement of a simple fact. We have gone to the extreme length of taxation in Manitoba. We have economized in every particular except that of paying the debt charges upon our provincial debt. If we are to live within our





means in accordance with this blunt advice, we can only do so in fact by defaulting on our debt payments. It was to avoid such a contingency that we pressed for this very Commission. We pressed for it because we thought that what had been accomplished in other countries, such as Australia, could be accomplished in Canada, and because we thought that provincial default in Canada would be a serious reflection upon the ability of this federal state to conduct its provincial relationships.

"We do not think that default is necessary. We have never thought that it was necessary or that it could not be avoided by intelligent cooperation, that intelligent cooperation which we hope will come as one of the consequences of this Commission.

"Nevertheless we re-affirm most positively that, if there is to be no action taken as a result of this Commission, the Province of Ontario and the Dominion of Canada may just as well make up their minds now as later that there will have to be a drastic adjustment of public debt burden in more than one province in Canada and in many additional municipalities. That action will occur, not because we desire it -- the Bank of Canada has vouched for our having done everything within reason to avoid it -- but if we continue with our present system of public finance and division of Dominion-Provincial responsibility, default will surely come, because it will be inevitable. And when it comes -- if it does come -- those who oppose the type of changes and adjustments which it has been found possible to make in other countries, such as Australia, will not be free from any odium that attaches to it.



Premier Hepburn's Views on Wheat

"I come now to a different phase of the Ontario presentation -- that respecting the wheat industry of western Canada. In introducing Ontario's case before this Commission, Premier Hepburn, in our judgment, went out of his way to make an attack upon the wheat industry of western Canada. In fairness to western farmers and to the public in Canada, I feel it my duty to place before this Commission a different, and I hope, a sounder interpretation of the economic position of the wheat industry of the West and of the views of the thousands of farmers who are engaged in the production of grain crops. Such an interpretation would be justifiable at any time, but is all the more necessary now since this Commission has heard views expressed on the agricultural industry of the prairies which cannot be accepted in western Canada, and I do think ought not to be accepted in any other part of Canada. I shall endeavour to show that Mr. Hepburn's analysis was inadequate and that it can only have the effect of misleading the public of this country as to the actual situation existing in western Canada.

"Before stating his interpretation of the wheat situation in the West, Mr. Hepburn made certain statements in regard to the farmers of western Canada, which I know from long years of experience were thoroughly unjustified.

"In the first place he states that some of our problems are due to the fact that our farmers 'were not so well grounded in their holdings', and in proof of this statement he submits the fact that 32.7 per cent of farm operators in Manitoba had occupied their land for less than five years according to the census





of 1931. Had he been fair to western farmers, he would have stated that in the same year 23.4 per cent of Ontario farm operators had been on their present farms for less than five years. The difference in this respect between Manitoba and Ontario is not very great. But he should have pointed out also that there was some immigration into Canada in the late 20's and that this accounted for some at least of the new arrivals in the farming industry in Manitoba. Had he wished to present a complete picture, he would also have indicated that there is more tenancy in western Canada than in Ontario, a fact which accounts for a measure of shifting of operators from one farm to another. In 1931, 81.9 per cent of the farms of Ontario were operated by owners, as compared with 70.1 per cent in Manitoba. This fact in itself would make for a greater movement in farm families in Manitoba as compared with Ontario.

"Then Mr. Hepburn went a step further and referred to the fact that 'not only were thousands of western farmers 'new' to the lands they occupied, but a large percentage of them were also quite 'new' to the country."

"It is quite true that the West has received citizens from many countries throughout the world and particularly from Europe, but Mr. Hepburn must be quite aware of the fact that if this is any disadvantage it was Federal immigration policies which were largely responsible for the character of the population of western Canada. He must also have been aware that the period of rapid immigration into western Canada came in the years from 1890 to 1914, and that a very large percentage of the immigrants who came to western Canada came as young men and have lived their entire working





lives on the prairies. To say that these citizens of Canada were in any way responsible for the major problems now faced by western Canada is to show an utter ignorance of western agriculture.

"As I have stated the vast majority of our citizens who came from other countries came in pre-war years and in 1930 were not in any sense 'new' to the country in which they lived. More than that, a new generation has now arrived on the scene, and the sons and daughters of these citizens are now playing a major part in the economic life of the West.

"I will not say more in connection with this point except to state that the foreign-born people who came to Manitoba have been as successful in meeting the conditions with which they were confronted and are as thoroughly adjusted to the conditions under which they have to live as any group in the province. I have witnessed the development of agriculture in all parts of western Canada for more than three decades, and I have no hesitation in saying that the foreign-born citizens of the West are making a magnificent and wholly creditable effort to meet the trying conditions with which they have been confronted, many of which are still with us to-day.

"The suggestion that those who came to us from other countries and took up land in the West have in any way constituted a liability during these difficult times is quite erroneous and will be generally resented by those who know the facts. It is entirely fallacious for anyone to suggest that the presence of foreign-born citizens in western Canada has in any way been the cause of the West suffering more than the East during the past seven or eight years. In fairness to the people of western Canada, and particularly in fairness to that



large body of foreign-born citizens of the West, I feel it my duty to make this point clear before this Commission and before the people of Canada.

"Premier Hepburn states also that 'it is difficult to reconcile an increase in the number of farms in Manitoba with the statements of disabilities which we have already made to this Commission'. Let me remind this Commission that there are factors in western Canada making for the increase in the number of farms which are directly attributable to a lack of well-being and not to the opposite condition.

"Mr. Hepburn finds in the data showing a 5 per cent increase in the number of farms in the Prairie Provinces between 1931 and 1936, evidence contradicting the claims we have made that this was a period of marked economic distress on the Prairies. An increase in the number of farms, with an increase in population, and practically no increase in area of field crops, reflects the splitting-up of established farms and the attempt to make a living from new and smaller farms on sub-marginal land rather than the normal growth of a prosperous agriculture.

(Page 10307 follows.)



"This Commission is aware of the deplorable unemployment conditions which have existed in urban centres in Manitoba, and particularly in the City of Winnipeg. It is also aware of the fact that under such conditions, substantial numbers of urban residents have endeavoured to find locations in the country in order to avoid the consequence of unemployment in urban centres and the necessity of being provided for by relief. There are large numbers of families in urban centres who in recent years have endeavoured to establish themselves in the country, not to seek prosperity in a new environment, but driven there by depressed conditions in urban localities and the desire to be at least self-supporting during the difficult years which we have experienced.

"This fact is borne out when one considers that the expansion in the number of farms in Manitoba is largely explained by an expansion in the smaller farm units, and indicates a basic desire for self-sufficiency.

"Another factor is that Manitoba has an unusually large percentage of young people from 20 to 24 years of age. Owing to lack of prosperity on the home farm, young people have endeavoured to maintain themselves by taking land elsewhere. Lack of farm income has driven them to attempt to provide for themselves in newer areas.

"In addition we have had a drought area in southwestern Manitoba and in large areas of Saskatchewan, and naturally some people have left these areas and tried to establish themselves in parts of the Province of Manitoba where climatic conditions are more favourable. There has also been the Government supported Rural Rehabilitation Scheme for settling unemployed people on the land. All these have contributed to





"the small increase which the statistics show in the number of farms in Manitoba. I merely wish this Commission to note that a point which Mr. Hepburn stresses as an indication of well-being is quite the opposite and is due to the economic pressure of adverse conditions in both city and country, rather than to any rush for the opportunity to gain prosperity on western farms.

#### The World Wheat Situation

"The Premier of Ontario undertook to speak with a measure of finality upon one of the most complicated of modern problems, namely, the world wheat situation. Mr. Hepburn states:

"The case of the Prairie Provinces for compensation at our expense rests on the fallen fortunes of the wheat-growers and it has seemed to me, we ought to have before us a brief statement of what really happened to wheat. Fortunately, there is little room for controversy over the matter; the subject has been investigated, times again, by authoritative bodies, including the Imperial Economic Committee, the International Institute of Agriculture and the League of Nations and, without dissent, they agree that the catastrophe began with an upset in the ranking of wheat exporters during the war.'

"Without in any way admitting that the case for the Prairie Provinces for compensation rests upon the 'fallen fortunes of the wheat-growers' let me make a few observations upon what transpired in respect to wheat production in Canada.

"This is not the first time that the West has been accused of undue expansion during the World War. No



"one will deny but that expansion took place. As a matter of fact, the wheat acreage of the Prairie Provinces increased from 9.3 million acres in 1914 to 22.2 million acres in 1921. (Incidentally I may point out that if this is the chief cause of the distress of western agriculture, the Province of Manitoba did not contribute to it. Our acreage even to-day is not more than in pre-war days)."

As a matter of fact it is not very different from what it was thirty years ago.

"But in connection with this expansion of wheat growing in the West, I wish to make two points abundantly clear:

"In the first place there was an extremely acute demand for wheat during the years of the World War, and the response of wheat growers in the west was a natural response to a keen demand for their product. A market was there and the growers tried to produce for that market.

"In the second place I am sure that every intelligent citizen of Canada will admit that what Western Canada did in the days of the World War was part of a great national effort which this country put forward. As a country Canada sent nearly 500,000 men to Europe to take part in that conflict. As a country we raised tremendous sums of money to help pay for our participation in that War, and as a country we did everything in our power to produce the necessary foodstuffs and other materials needed for the Empire in her hour of greatest trial. It should be a matter of pride to Canada that the wheat industry of Western Canada responded as best it could to the national emergency. It was part of our natural and logical contribution to the allied cause during that



"conflict. In this connection it is pertinent to observe that it was in part at least a response to the campaign by the Canadian Government on behalf of the Canadian people to increase production. Everyone here will recall the greater production campaign of the war years when by government assistance every inducement was offered to have western agriculture produce more and more, even to the extent of the Dominion Government inducing farmers to produce more by, among other things, the purchase and sale to them at cost price of some 1,200 or more gasoline tractors.

"But Mr. Hepburn states:

"'If the League's Committee is right in concluding that the relative over-production of wheat was responsible for the agricultural Crisis, and right, that Canada, in this instance, Western Canada, was responsible for the 'greatest absolute and relative' over-production of the world's wheat supply; then the prairie provinces are themselves the makers of their own (and other people's) misfortunes.'

"Since the major part of the expansion of wheat acreage in Western Canada took place during the War as part of Canada's great national effort at that time, is Mr. Hepburn entitled to say 'the prairie provinces are themselves the makers of their own (and other people's) misfortunes'? Was the West's part in that crisis 'bad judgment'? I leave that issue to any fair-minded Canadian. In this connection I wish only to put alongside Premier Hepburn's statements of the 'greatest absolute and relative' over-production of the world's wheat supply and 'the prairie provinces are themselves the makers of their own (and other people's)





"misfortunes", a number of other statements authorized and spread broadcast by the Government of Canada and some of her leading statesmen and business men during those critical war years which saw the great expansion of western agriculture."

Mr. Chairman, in the brief before you you will find a considerable number of extracts from paid advertisements by the Dominion of Canada during each of the four years of the war - advertisements sponsored by the Department of Agriculture, by the Department of Finance and by the Dominion government as a corporation. These advertisements include statements by the Hon. Martin Burrell, at that time Minister of Agriculture, Sir Thomas White, the Right Hon. Mr. Bennett, who was at that time Director of an organization of the Dominion for the promotion of greater production, the Hon. Charles Dunning and Sir Edmund Walker, President of the Canadian Bank of Commerce. I do not propose to take up your time reading all these extracts, but perhaps you will allow me to refer briefly to some of them in order that the Commission may get the drift of what was taking place. I have given extracts in the brief, some of which I will read to you now. I can save the time of the Commission a little if you consider it satisfactory to have some of these advertisements filed for your information. Many of them are full page advertisements, and there are a number of copies here, all referred to in the brief.

THE CHAIRMAN: It will appear in the evidence.

HON. MR. BRACKEN: May I ask permission to file a copy.

THE CHAIRMAN: Yes.

MR. FOWLER: That will be number 422. The brief is 421 and that will be 422.

THE CHAIRMAN: I thought 421 was the brief from Prince



Edward Island.

MR. FOWLER: We did not actually mark that; it was read into the record.

(At the request of Premier Bracken, pages 19 to 27, inclusive, not read in full, are inserted in the record by direction of the Chairman).

"A Message to the Farmers of Canada - by Hon. Martin Burrell (Minister of Agriculture, Jan. 1, 1915 - Agricultural War Book, a Canadian Government publication.)"

"Approximately twenty million men have been mobilized in Europe. A large proportion of these have been withdrawn from the farms of the countries at war. Even in neutral countries large numbers of food producers have been called from the land to be ready for emergencies. It is difficult for us to realize what will be the effect on food production through the withdrawal of several million men from all the great agricultural countries of Europe. These millions cease to be producers, they have become consumers;- worse still, they have become destroyers of food.

"While we all deplore this war, we believe that the greatest crisis will be productive of good results toward Canada. Business men and the rank and file are uniting in showing their heroism in every way. They are animated with a spirit of loyalty and devotion which will result in the building up of a greater Canada, a greater expansion of manufacturing industries and the development of a new field for our commercial activities.

"Should the war continue into the summer of this year the food production in Europe cannot approach that of normal years. Looking at the situation in even its





"most favourable light there will be a demand for food that the world will find great difficulty in supplying. Canada is responding promptly to the call of the Motherland for men and equipment. Britain needs more than men, she must have food - food this year and food next year. We are sending of our surplus now. We should prepare for a larger surplus this year and next year. The Government is strongly impressed with the desirability of increasing the crop acreage in Canada. The Canadian farmer, earnestly bending all his energies to increase the food supply for the Britisher at home and the British soldiers at the front, is doing his share in this gigantic struggle of the Empire.'

"Hon. James S. Duff, Minister of Agriculture, Ontario,  
(Agricultural War-  
Book) Jan. 1915.

"There will undoubtedly be need for foodstuffs along many lines in addition to wheat, such as potatoes, beans, oats, dairy products, livestock and poultry. I would like to point out that during the past season there were over 3,300,000 acres of land devoted to pasture. Now that there is every prospect of a good supply of labour, I think a great deal of this land could with advantage be broken up and put into crop. Aside from the question of price, it is undoubtedly the patriotic duty of every farmer to do his best to help in relieving the Mother Country from any occasion to worry over the food supply either of the men at the front or those at home. Incidentally it may also result in establishing trade connections which will be of great value long after the war is over. This can best be done by using as large an acreage as possible and by adopting the best methods of cultivation available.'





"Sir George Paish - Financial Adviser to Great  
Britain (Agricultural  
War-Book) Jan. 1915

"It is evident that the railway machinery created to take care of the production of the country is sufficient to deal with at least twice, if not three times, the existing output, and it is obvious that the burden of interest upon the immense amount of capital supplied will be a heavy one until the productive power of the country is greatly increased. I am convinced that every possible effort will be made by all concerned - The Canadian Government, the Provincial Governments, the municipalities, the great railway companies, bankers, traders, and others as well as by British investors - to increase rapidly the agricultural and mineral output of the country upon which the welfare of the Canadian people, both individually and collectively, absolutely depends, and that the effect of their concerted effort will be so great that the country will carry with safety a burden of interest which might otherwise overtax its strength. It is, however, of the greatest possible importance that the work of directly increasing the productive power of the country by placing a larger proportion of the population upon the land and in the mines should be carried out with the least possible delay.'

"In Grain Growers' Guide, part of a full page paid  
advertisement by the  
Canadian Department of  
Agriculture, Ottawa,  
Feb. 17, 1915.

"Britain must have food - food this year, and food next year. Britain is looking to Canada to supply most of that food. We are sending our surplus now, but we must prepare for a larger surplus this year and next year. Patriotism and Production must go hand in hand.



"'Because of this need of the Empire for food and the call to Canada in that need, the Canadian Department of Agriculture has arranged for a series of Conferences throughout the Dominion with the object of giving suggestions as to the best ways of increasing production of the particular products needed at this time.'

"'In Grain Growers' Guide, part of a paid advertisement by the Canadian Department of Agriculture, Ottawa, Feb. 24, 1915.

"'Canada this year cannot produce too much staple food. No matter how large her surplus for export, there will still be need of more food in Europe and Britain. The Canadian Government, therefore, urges all farmers and producers of food to attend the series of Conferences now being held throughout the Dominion under the direction of the Canadian Department of Agriculture. Let farmers get together at these Conferences and discuss the vital questions of the day. Agricultural specialists will also be on hand to give valuable information as to the food products the Empire and her Allies most need, and to offer suggestions to increase production. The important thing now is to complete at once your plan for the year's work - for increased production. By planning well in advance, each month's operations can be carried through more effectively when the time comes. Delays later on, through neglect of this, will mean loss to you and to the Empire.

"'Every man (unemployed) in the town or city who is placed on the farm becomes immediately a producer instead of a mere consumer and a civic expense. With Britain and her Allies calling for more food, it will be a national loss, in fact a national crime, to leave



"in the towns and cities any unemployed men who are capable, as thousands of them are, of being of assistance on the farm.

"'Have you a house on the farm for a married man? A real home for the farm labourer will solve this problem.'

"In Grain Growers' Guide, part of a paid advertisement by the Government of Canada, sponsored by the Department of Agriculture and the Department of Finance, 1916, Hon. Martin Burrell, Minister of Agriculture.

"' Canada from her abundance can help supply the Empire's needs, and this must be a comforting thought for those upon whom the heavy burden of directing the Empire's affairs has been laid. Gain or no gain the course before the farmers of Canada is as clear as it was last year - they must produce abundantly in order to meet the demands that may be made, and I believe this to be especially true in regard to live stock, the world's supply of which must be particularly affected in this vast struggle. Stress and strains may yet be in store for us all before this tragic conflict is over, but not one of us doubts the issue, and Canadians will do their duty in the highest sense of that great word.'

"Sir Thomas White, Minister of Finance:

"'Modern war is made by resources, by money, by food-stuffs, as well as by men and munitions. While war is our first business, it is the imperative duty of every man in Canada to produce all that he can, to work doubly hard while our soldiers are in the trenches, in order that the resources of the country may not only be conserved, but increased, for the great struggle that lies before us. 'Work and Save' is a good motto for War-time.'





" WHAT IS NEEDED?

These in particular

WHEAT, OATS, HAY,  
BEEF, PORK, BACON  
CHEESE, EGGS, BUTTER,  
POULTRY

CANNED FRUITS, FRUIT JAMS,  
SUGAR, HONEY, WOOL, FLAX  
FIBRE, BEANS, PEAS, DRIED  
VEGETABLES'

Sir Thomas White, Minister of Finance, in a paid advertisement in the Grain Grower's Guide, sponsored by the Government of Canada, the Department of Agriculture and the Department of Finance, April 26, 1916.

"To win the war with the decisiveness which will ensure lasting peace, the Empire will require to put forth its full collective power in men and money. From this viewpoint it is our true policy to augment our financial strength by multiplying our productive exertions and by exercising rigid economy, which reduces to the minimum all expenditures upon luxuries and non-essentials. Only in this way shall we be able to make good the loss caused by the withdrawal of so many of our workers from industrial activities, repaid the wastage of the war, and find the funds for its continuance. It cannot be too frequently or too earnestly impressed upon our people that the heaviest burdens of the conflict still lie before us, and that industry and thrift are, for those who remain at home, supreme patriotic duties upon whose faithful fulfilment our success, and consequently our national safety, may ultimately depend.'

"Let us Produce and Save-

'The war is now turning on a contest of all forces and resources - men, munitions, food, money. The call to all is to produce more and more. It may be necessary to work harder. The place of those who enlist must be taken by those at home, men and women, old and young. The more we produce the more we can



"'save. Produce more on the farms and in the gardens.  
Save more and help win the war."

"In Grain Growers' Guide, part of a paid advertisement by the Government of Canada, the Department of Agriculture and the Department of Finance - May 10, 1916.

"'Produce more and Save More - The Empire needs food. If you are not in the fighting line you may be in the producing line. Labour is limited - all the more reason to do more than ever before. Grow food for the men who are fighting for you. The Allies need all the food that you can produce. Every little helps. You are responsible for your own work. If you cannot produce as much as you would like, produce all you can. Work with the right spirit. Put fighting energy into your effort and produce now when it counts. The more you produce the more you can save. Producing and saving are war-service.'

"Hon. Martin Burrell, Minister of Agriculture in a Dominion government publication - Production and Thrift. 1916.

"'TO THE FARMERS OF CANADA

To the call for men, and more men, Canada has nobly responded, and every day sees fresh battalions on their willing way to the Empire's battle line. To the unceasing and unselfish work of the women of Canada we all pay a heartfelt tribute, and the patriotic activities of our people in the cities and towns have made life a finer thing than it was before. But those concerned with the production of that which is the life-blood of the armies in the field have been no whit behind.

"'The farmers of Canada realizing as perhaps never before the important part that the production of food stuffs plays in such a gigantic struggle, looked upon





"their calling and responsibilities with deeper respect and broader view, and made strong efforts to give their assistance by increasing production along all possible lines. To what extent, small or great, the appeal made last year was responsible for this, I cannot tell, but in any case I gladly here express my own and the Government's deep appreciation of the fine response made. The results have surpassed expectations. Canada from her abundance can help supply the Empire's needs, and this must be a comforting thought for those upon whom the heavy burden of directing the Empire's affairs has been laid.'

"In 'Production and Thrift' - 1916 - (Foreword)

"'Thanksgiving in England for Canadian Crops -

On Thursday last, writes a London correspondent, under date of Oct. 5, a church service such as has never before been held in London was celebrated when the Lord Mayor of London and the sheriffs paid a state visit to the old London church of St. Andrew Undershaft to attend the annual harvest thanksgiving service of the Baltic Exchange and the National Food Stuffs association. The service was noteworthy in being one of thanksgiving for the bountiful Canadian harvest. The Bishop of Willesden, whom you know better under the name of Bishop Perrin, former bishop of British Columbia, gave the address in this, his parish church in the heart of old London, and to the assembled wheat kings of Britain, told a simple but eloquent record of the work of the Canadian wheat growers on the prairies. He gave a word picture of the great grain-raising areas of western Canada, told of the determination of Canadian farmers, when the question of good supplies for the motherland became acute, to provide all that was





"required, and their redemption of that promise in the production of a record crop. Also he spoke of the prodigal abundance of gifts of all kinds from Canada to Great Britain.'

"In Grain Growers' Guide, part of a paid advertisement by the Dominion Department of Agriculture, Ottawa, Hon. Martin Burrell, Minister. March 26, 1917.

"His Majesty King George - 'I am assured that my people will respond to every call necessary to the success of our cause - with the same indomitable ardour and devotion that have filled me with pride and gratitude since the war began.'

"'Keep up the Food Supply and Help Make Victory Sure.

"'Our soldiers must be fed; the people at home must be fed. And - in spite of Germany's murderous campaign to cut off the Allies' Food supply, by sinking every ship on the High Seas - an ample and unfailing flow of food to England and France must be maintained.

"'Every pound of food raised, helps reduce the cost of living and adds to the food supply for overseas.

"'Plant a garden - small or large. Utilize your own back yard. Cultivate the vacant lots. Make them all yield food.'

"NECESSITY FOR PRODUCTION GREATER THAN EVER BEFORE -

"An Appeal to the Farmer is made by Sir Edmund Walker, President of the Canadian Bank of Commerce in his annual address. (Grain Growers' Guide, Jan.30,1918)

"'.....These figures show some of the activities of the Canadian people in the way of production, but the need is greater, in some directions much greater, than ever before. The out-pouring of supplies of all kinds, from wheat to shells, must go on, but the



"most crying needs are for sea-going ships, aircraft and all those forms of food which are more necessary than others to sustain life in its fullest vigor and without a sufficient supply of which the allied nations are threatened with starvation. The supply of wheat is vital, and the losses of shipping add enormously to the difficulty of obtaining supplies from the southern half of the world. At the same time the scarcity of labor makes the life of the North American farmer so difficult that he needs all our sympathy, and should have all the assistance which the city worker or student can give him in summer time.

".....We ask the farmer in spite of the great difficulties which confront him, to produce to the last ounce, but how can we make our city people save food, remembering that every ounce saved will provide food elsewhere for those who without it must starve?"

"In the Grain Growers' Guide, part of a paid advertisement by Canada Food Board, April 17, 1918.  
Chas. A. Dunning, Director of Production.

"Our Allies are desperately short of food. In the midst of plenty ourselves we must face the stern reality of England on shorter rations than she has been for over a hundred years, and France with only three day's food reserve. Even from their present small supplies they are saving Italy from collapse through hunger.

"Canada must provide wheat and meat in increasing quantities to meet a situation that imperils the issues of the war.

"An increased spring acreage in wheat and other grain is vitally needed.

"Starvation is threatening our Allies. Everyone in Canada must fight by doing his or her utmost to



"'produce and to conserve food.'

"In the Grain Growers' Guide, a paid advertisement  
by Canada Food Board,  
May 15, 1918.

"'Our Allies must be fed - - After nearly four years of war, our Allies are living from hand to mouth, depending entirely on the safe arrival of food ships from across the Atlantic.

"'Because of our comparative nearness to our Allies, and because of our wide, fertile areas, this continent must continue to feed Europe. If we fail, hundreds of thousands of people may starve and our armies be denied a conclusive victory.

"'A bumper crop, a record harvest and increased meat production in Canada will be worth the winning of many battles to the Empire and our Allies at this critical period.

"'INCREASED PRODUCTION IMPERATIVE - Canada must raise for export at least 250,000,000 bushels of wheat more in 1918 than in 1917, to enable the Allies to maintain even their present restricted rations.

Authorities agree that the world-wide shortage of food will continue for years after the war. The farmer is assured a ready and profitable market for all the grain and meat that he can produce.'

"May 8, 1918. A paid advertisement - Canada Food Board, Ottawa.

"'Lord Rhondda, Food Controller for Great Britain -

"'The Allied Larder is dangerously empty, but we are carrying on in the resolute belief that we can rely on the people of North America to prevent our food supplies from becoming so diminished as to imperil the issue for which we are all fighting.'

"'Let Canada's answer to Lord Rhondda's appeal be:





"'WE SHALL DO OUR UTMOST TO MAINTAIN OUR ALLIES'  
FOOD SUPPLIES.'

"CANADA'S WAR EFFORT 1914 - 1918. A paid advertisement issued by the Director of Public Information, Ottawa. (1918)

"'FOOD CONTROL-

"'Our net exports of pork, including bacon and lard, have increased by 125,000,000 lbs. per annum.

"'Our net exports in wheat and wheat flour have increased by over 80,000,000 bushels per annum.

"'The double task of increasing production and promoting food conservation rests with the Canada Food Board, which was created in February, 1918, and was entrusted with all the powers and duties of the Food Controller, whose office it absorbed.

"'In grains and in certain important vegetable crops this year's acreage shows a substantial increase over that of 1917, in spite of a very general shortage of farm labour. The following figures illustrate the extension of areas under crop:

<u>Commodity</u>	Acreage in <u>1917</u>	Acreage in <u>1918</u>
Wheat	14,755,850	15,838,000
Oats	13,313,400	13,784,000
Barley	2,392,200	2,403,750
Rye	211,880	228,900
Buckwheat	395,977	407,000
Potatoes	656,958	686,300
Beans	92,457	105,560
Total -	<u>31,818,722</u>	<u>33,453,510</u>

"'During this year about 12,000 school boys have been placed on Canadian farms as temporary employees during the long vacation. Agricultural help from the cities has also been mobilized on a voluntary basis.

"'In order to encourage increased production the Food



"Board early in the spring, purchased and sold at cost 1,123 tractors to the farmers of Canada through the Department of Agriculture of each province.'

"In the Grain Growers' Guide - June 6, 1917 - A paid advertisement, by the National Service Board of Canada.

"Between Seeding and Harvest break or summer-fallow every acre you can for your 1918 crop.

"The civilized world is tightening its belt in the face of threatened famine - for since the war food production has fallen far behind its consumption.

"To the farmers of the Empire, and particularly to those of western Canada, the Entente Armies look for the food they must have to win through !

"When you have done your best towards this year's crop - remember that hundreds are depending on your farm for food, and prepare for bigger crops in 1918 !

"New land must be broken now to yield well next year. Summer-fallows must be thoroughly cultivated to keep them clean and conserve the moisture necessary for the heavy 1918 crops so urgently needed.

"You serve your own best interests when you plow and harrow for the Empire - for the abnormal demand ensures exceptional prices and profits.'

"In the Grain Growers' Guide - May 9, 1917. A paid advertisement, by the National Service of Canada, R. B. Bennett, Chairman.

"Prepare NOW for bigger crops in 1918 !

"Canada's paramount duty to the Empire and her valiant Allies is to produce wheat - and still more wheat - on her broad and fertile prairies.

"There are many indications that the need may - probably will - be greater in 1918 than it is now.



"The imperative necessity for Canada's best efforts is emphasized by the shortage of tonnage, and the fact that a ship can make three trips to North America for one to any other overseas wheat country.

"The time for breaking new land, and summer fallowing for next year's crop, is upon you ! Unless you do it NOW you cannot profitably add an acre to your grain crop next year.'

"In Grain Growers' Guide - June 20, 1917. A paid advertisement by the National Service Board of Canada.

"With Europe's food production reduced more than half by the war - with Argentine's heavy losses from drought - with cold weather's damage to United States winter wheat - in 1917 is bound to see a still further alarming reduction in the world's food supply.

"The hope of the British Empire centres largely in western Canada's fields ! When you have done your best for this year's crop - look ahead to 1918 and prepare for a still bigger crop to meet its greater needs.'

"In the Grain Growers' Guide - July 11, 1917. A paid advertisement by the National Service Board of Canada, Ottawa.

"Harrow for the Empire -

"Prepare your summer-fallow for Maximum Crops in 1918.

"Lloyd George "The line which the British Empire holds against the Germans is held by those who WORK ON THE LAND as well as by those who fight on land and sea.'

"If western Canada is to produce more next year, preparations must be made now. New land must be broken in the proper season.

"In Maximum production lies your duty to the Empire,





"and your opportunity for well-rewarded service."

That perhaps is sufficient to give you some idea of the pressure that was brought to bear upon the farmers of western Canada during the years 1915-18 to increase production and to extend development of wheat farming in that part of the country. I will now continue reading from page 28 of the brief.

"Since the major part of the expansion of wheat acreage in western Canada took place during the War as part of Canada's national effort at that time, is Mr. Hepburn entitled to say 'the prairie provinces are themselves the makers of their own (and other people's) misfortunes?' Was the West's part in that crisis 'bad judgment'? Again I repeat I leave that issue now to the decision of any fair-minded Canadian.

"I have shown the general attitude of the Canadian government, Canadian statesmen and leading business men during the War years. After the conclusion of the World War and the early post-war years, there was a sharp contraction in wheat acreage in the prairie provinces, and nearly three million acres of land went out of production between 1921 and 1925. In the years following 1925 there was a gradual increase in wheat acreage in the prairie provinces, and once again that increase was brought about by a keen demand for our product -- a market was there and we produced wheat for that market. The years of the depression brought adjustments in our wheat acreage, and at the present time the wheat acreage of the Prairie Provinces stands at a little less than three million acres higher than in 1921, a very small increase over a period of fifteen years.

"I am not one to say that Canada has not a wheat



"problem. Since 1930 we have had a very real wheat problem, and we are to-day confronted with probably the most serious situation that we have yet faced in respect to this industry. But I defy any man to prove that the wheat problem with which we are confronted to-day has its origin in the Prairie Provinces.

"Most authorities will readily admit that the world wheat situation to-day is international in its origin and results from the breakdown in international trade and commercial relationship between countries. In all his discussion of the wheat problem Mr. Hepburn makes no mention of the great international forces which brought about the crisis of 1929-30 and the violent contraction in the volume and value of world trade, and the incidence of this development upon those countries with highly specialized economies, particularly those exporting agricultural products.

"Our position in respect to wheat was not a single instance as far as the world was concerned. The breakdown of international trade affected all great commodities. It affected coffee in Brazil. It affected wool, it affected cotton, and it affected minerals such as tin and copper. Behind all these devastating conditions lay not alone the increased ability of the world to produce these commodities, but the inability of basic commodities to move freely in international trade. Tariffs went up and up the world over -- new devices for the control of imports were devised overnight and the world renounced what heretofore had been considered as the elementary basis of national well-being, namely, one in which commodities could be exchanged between different countries with relative freedom. The result has been that within the last ten years the importing





"nations of the world have bought some 200,000,000 bushels per year less wheat than they did prior to that date.

"I say to this Commission and in reply to those who like Mr. Hepburn say that the basis of the wheat problem lies in increased production in the Prairie Provinces - I say to the extent that this was a factor in Saskatchewan and Alberta it was the result of a national appeal; but I say further that the basis of the problem that has forced itself upon us within the last ten years lies not in the war time effort of the Prairie Provinces, but in the breakdown of international trade.

It is tragic to examine conditions in many countries in the world to-day and see the visible evidences of trade restriction -- see highly civilized countries curtailing their imports of foodstuffs in the face of a very real need for these products. We see these countries endeavouring to find substitutes for wheat. We see them using corn along with wheat in the manufacture of flour. We see them using potatoes as a substitute for imported wheat. One great country, namely, Germany, has virtually been on the basis of having foodstuffs rationed, so great is the scarcity of the staple foods which her people need in their diet.

"All these things represent the reaction of importing countries to policies of trade restriction. With markets for their manufactured goods greatly curtailed, wheat importing countries in Europe have tried to defend themselves and their economic position by curtailing imports of foodstuffs. These were not developments which would have been averted by the farmers of western Canada. They were unexpected as far as we were





"concerned, and we had no powers at our disposal to meet the situation in any way.

"In connection with trade restrictions, let me emphasize another point. In 1930 the wheat importing countries were confronted with a radical upward revision of tariffs in both Canada and the United States - the wheat importing countries of Europe were confronted with new and unprecedented trade barriers in the North American market, a market of 140,000,000 people as far as they were concerned. I ask this Commission, what could these European countries do in the face of the Hawley-Smoot Tariff in the United States in 1930, and the Canadian tariff revisions of the same year? One of their important markets for manufactured goods was suddenly restricted to an extent unheard of in preceding history."

The result is that to-day we find these countries importing 200,000,000 bushels of wheat a year less than they did ten years ago. That is the basis of our present wheat problem in western Canada and in other parts of the world.

"I submit that tariff action was taken in Canada in 1930 without proper regard to the repercussions that might follow in respect to the commodities of which Canada was a large exporter. I submit that the future of the wheat growing industry in Canada was not given due consideration when this action was taken in this country in 1930. I submit that the government of that time did not pay sufficient attention to the basic problem of exporting large quantities of Canadian wheat when it raised tariffs against the manufactured goods of wheat importing countries.

"I am not stating that the government of that day did not sincerely believe that it was serving a national



"interest, but I do unhesitatingly state that in serving what it believed to be a national interest, it brought new and unexpected problems to the wheat farmers of the prairie provinces."

COMMISSIONER MacKAY: The time factor might be rather important in that argument, might it not? Were the tariffs of other countries raised before the increase in the Canadian and American tariffs? Did the increases in the Canadian and American tariffs precede, or were they subsequent to the rises in the tariffs of other countries?

HON. MR. BRACKEN: It is possible that some of the European tariffs were raised first. I know, of course, that it is customary here for some people to say that someone else first began raising tariffs, just as it is usual in other countries for them to say that somebody else first started tariff raising. The provincial treasurer mentions to me the fact that after the Hawley-Smoot tariff increases in the United States in 1930 there was a further wave of tariff increases in Europe. So that whoever started it, it was continued in greater force after those measures were taken on this side of the Atlantic. In any case it must be obvious, whoever started it, that if we do not buy goods from others they cannot buy goods from us, and that is the situation we have to face to-day.

"NOT ACCOUNTS RENDERED

"Before outlining the arguments Dr. Hansen and Dr. Viner will present I wish to refer to a statement on page 2 of Mr. Hepburn's brief, in which he states as follows:-

"included in these briefs were two Accounts Rendered: one for \$47,000,000 a year, for the period 1931-36, and the other, for \$58,000,000 a year without time-limit."

"These were not 'Accounts Rendered'.





"For the purpose of this Commission the burdens resting on the people -"

That is, the people as distinct from the government.

"For the purpose of this Commission the burdens resting on the people of the Prairie Provinces from the tariff and monetary policies of the Dominion government are relevant only as they reduce the financial capacity of the provincial government to serve their people, increase the amount of social services which they must render and as they increase the cost of materials and supplies used by the provincial governments. These policies are in part responsible for the financial difficulties in which the Prairie Province governments find themselves, and it is for that reason, and for that reason only, that we emphasize them here. In so far as the burdens on the people of the Prairie Provinces resulting from these policies are not accounted for by reductions in the tax revenues and required increases in the expenditures of the Prairie Province governments, we recognize that the people of the Prairie Provinces must seek redress through other channels than this Commission, viz., the Parliament of Canada.

The point of all this is that we are presenting these things because of their effects on governments, on their ability to raise revenue, and the added responsibility placed upon them in consequence of lower incomes; but it does not lessen the argument of the people for a change in policy.

"The Ontario Brief, Part II, Pages 83-84, states as follows:

"We have already said that if disabilities alleged to have resulted from Federal policy are to be made the basis of claims, ~~than~~ total Federal policy, and not one aspect of it, must be considered.





"We make no attempt to list all these policies or to assess any in detail, but we merely indicate some of the more important.

"(a) Railway policy, freight rates and railway deficits.

"(b) The heavy debt incurred for canals and other aids to navigation on the St. Lawrence-Great Lakes route.

"(c) The heavy 'transfers' of purchasing power from Central Canada to the Maritimes and to the Prairies arising out of Dominion public finance.

"(d) Excess cost to Ontario of tariff protected commodities sold in quantity to it by other provinces.'

"In this connection the facts are that from the beginning the opening up of the West in a manner that would make it a market for Ontario and Quebec was considered an essential part of the Confederation scheme.

"This policy of Western development as an essential part of the Confederation scheme is an historical fact which an examination of the Confederation debates will establish beyond any question. But if there were not abundant evidence to be had upon this matter, it would not seem to require any great insight for one to see that since Western Canada would be opened up and developed as an economic area, tributary either to the United States or to industrial Canada, a railway and canal policy, which opened it up as an area tributary to Ontario and Quebec, was not less in the interests of those two provinces than of Western Canada itself. It must be remembered in this connection that at the time of Confederation Western Canada was not significant as an economic area. At that time, therefore, Western Canada had no economic interests which could be



to-day regarded by the most biased observer as having been favoured by the railway, canal and development policy of Confederation. We suggest that from the time that the West came into existence as an economic area, it has been continuously a market for Quebec and Ontario to a much greater extent than those two provinces have been a market for Western Canada. This being so, it would seem to be to the interests of these two provinces to support policies which favour the development and the preservation upon a sound basis of Western Canada, if in no other capacity than as a very important market for the capital and labour of Ontario and Quebec. The fact that Eastern leaders have not at all times been conscious of this truth does not make it the less self-evident.

"The interdependence of Ontario and Quebec, upon the one hand, and Western Canada, upon the other, in respect of all aspects of transportation, would seem to make it extremely difficult to establish which of these two areas from time to time has been the ultimate beneficiary of transportation policy, rates and deficits. One fact at least is both beyond dispute and well worth noting - that is, the great industrial expansion and growth of prosperity in Ontario and Quebec coincided with the opening up and development of Western Canada.

Having dealt generally with some of the points raised in the Ontario brief, and at greater length with the comments made in that brief upon the wheat industry of Western Canada, I will content myself with an effort to summarize briefly what the other members of our delegation will have to say - Doctor Hansen on monetary policy, Doctor Viner on tariff policy, and Mr. Garson in a general summary of



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our position.

The Commission thereupon adjourned, to meet at 10.30 a.m.  
Tuesday, November 29.













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